Public Prosecutor v Azilah bin Hadri & Ors

A

HIGH COURT (KUALA LUMPUR) — CRIMINAL TRIAL NOS 46–3 OF 2006 AND 45–120 OF 2006
MOHD ZAKI J
9 APRIL 2011

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Criminal Law — Penal Code — s 302 — Murder — Conviction for — Death from probable blast related injuries — First and second accused jointly charged with murder — Whether prosecution's case proved beyond reasonable doubt — Whether first and second accused raised any reasonable doubt — Third accused charged with abetting commission of murder by first and second accused — Whether there was direct or circumstantial evidence of third accused's participation in commission of offence — Whether prima facie case established against third accused

C

D

Evidence — Confession — Made to superior — Whether made voluntarily without any threat or inducement — Whether admissible as evidence — Evidence Act 1950 s 24

E

Evidence — Credibility — Discrepancies in evidence — Effect of — Whether credibility restored when witness' evidence was considered with rest of prosecution's evidence

F

Evidence — Information leading to fact discovered — Admissibility of statement — Whether statements ought to be excluded — Evidence Act 1950 s 27

G

The deceased, an unmarried Mongolian woman aged 28, often travelled out of Mongolia to countries like Malaysia in the course of her work as a translator. On 8 October 2006 she had travelled to Malaysia with two others, her cousin and a friend, to meet her boyfriend, the third accused. It transpired that although the deceased managed to locate the third accused, the latter had refused to see her. Instead the third accused had hired a private investigator ('the PI') to protect his family from threats, harassment and blackmail from the deceased. The police were able to construct the events that led up to the murder of the deceased based on the evidence of the PI and one Rohaniza bt Roslan ('Rohana'), the confidant of the first accused who was with the first accused when he picked up the deceased from outside the third accused's house on the day of the crime. According to the PI, the deceased had made many visits to the third accused's house and had threatened to make a police report against the

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A third accused but was agreeable not to pursue with the report if the third accused gave her USD 500,000 and return air tickets for three persons to Mongolia. The PI had informed the third accused of the deceased's demands. On 18 October 2006, the deceased had lodged a police report alleging harassment and threats to her life by the third accused and the PI. On the night B of 19 October 2006, while the PI was on duty outside the third accused's house, the deceased and both her cousin and friend had attempted to visit the third accused in his house but left in the same taxi when they realised that the third accused was not at home. However, later the same night the deceased had returned alone and insisted on meeting the third accused. When the PI called C the third accused to inform him of the situation, the latter had informed him that the police were on their way to detain the deceased. Then the first accused had arrived in his car and taken the deceased away. However, according to Rohana, the first accused and the deceased had left in a car driven by the second accused. On 20 October 2006, the deceased's cousin and friend lodged a police D report about the disappearance of the deceased. The police discovered human remains which were proved to match the DNA of the deceased. The cause of death of the deceased was said to be probable blast related injuries. The first and second accused were jointly charged with the murder of the deceased, while the third accused was charged with abetting the commission of the murder of the E deceased by the first and second accused. These two cases had been tried jointly. The prosecution sought to lead evidence that when the deceased came to Kuala Lumpur on 8 October 2006 she had threatened the life of the third accused's daughter for money, and that this had led to the third accused conspiring with the first and second accused, who were both police officers from the special F action unit, to murder the deceased. At the trial, the prosecution sought to prove its case through direct, circumstantial, expert, scientific and documentary evidence. The prosecution also sought to introduce the confession made by the second accused to his superior officer; the statement made by the first accused that led the police party to the scene of the crime G where the human remains of the deceased were discovered; and to impeach the credibility of Rohana premised upon her contradiction of her evidence in court with her statement to the police. The third accused tendered a sworn affidavit and relied on the exculpatory statements in this affidavit to submit that this evidence had negated and nullified the act of abetment as alleged against him. H In his defence, the first accused claimed that he was not the last person to be with the deceased on the night in question and that the second accused had sent her back to her hotel. In his unsworn statement the second accused claimed that he was made the scapegoat and that it was not true that the first accused had handed over the deceased to him to be sent back to the hotel.

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Held, convicting the first and second accused of murder and sentencing them to death; acquitting and discharging the third accused of the charge against him:

(1) It is trite law that the onus is for the prosecution to prove that the second

accused's confession to his superior was made voluntarily without any threat or inducement. However, based on the second accused's responses in the course of the voir dire, this court found that the second accused's confession to his superior under s 24 of the Evidence Act 1950 was procured by obvious inducement and threat inflicted by his superior. As the alleged confession was actuated by fear in the mind of the second accused it was held to be involuntary and inadmissible as evidence (see paras 72–74 & 77–85).

(2) Although the explanation advanced by Rohana was not absolutely satisfactory, her credibility was restored when her evidence was considered with the rest of the prosecution's evidence (see para 127).

(3) The court did not exercise its discretion to exclude the evidence of the first accused that led the police party to the scene of the crime, or the evidence of the second accused which led to the discovery of the jewellery worn by the deceased. This court found that both these pieces of s 27 evidence taken together with the other prosecution evidence such as the call logs, forensic video analysis photographs, and the traces of blood from inside the second accused's car had the cumulative effect of tending to connect both the first and second accused to the charge against them (see paras 129–130 & 139).

(4) Having subjected the evidence led by the prosecution to a maximum evaluation, this court found that even if the third accused could be inferred as having had a 'motive' in the light of all the blackmailing letters of the deceased it could not be made a basis for conviction of him without any direct or circumstantial evidence of his participation in any manner in the commission of the offence. Thus, the there was no prima facie case against the third accused and he was accordingly found not guilty and acquitted and discharged of the charge against him (see paras 145–146).

(5) The court found the defence of each of the accused to be essentially one of denial, of blaming one another, irreconcilable and ambivalent. Consequently they had failed to raise any reasonable doubt on the prosecution's case. Accordingly they were both found guilty and convicted as charged for the offence of murder under s 302 of the Penal Code read together with s 34 of the same Code and sentenced to death (see paras 150–155).

[Bahasa Malaysia summary

Si mati, seorang wanita warganegara Mongolia berumur 28 tahun, sering membuat perjalanan dari negara Mongolia ke negara-negara seperti Malaysia dalam kerjayanya sebagai penterjemah. Pada 8 Oktober 2006 dia telah ke Malaysia dengan dua orang yang lain, sepupunya dan seorang kawan, untuk menemui teman lelakinya, tertuduh ketiga. Didapati bahawa walaupun si mati berjaya mencari tertuduh ketiga, tertuduh ketiga enggan berjumpa dengannya.

A Sebaliknya, tertuduh ketiga telah mengupah seorang penyiasat persendirian ('PP') untuk melindungi keluarganya daripada ancaman, gangguan dan ugutan si mati. Pihak polis berjaya membentuk kejadian yang membawa kepada pembunuhan si mati berdasarkan kepada keterangan PP, dan seorang yang bernama Rohaniza bt Roslan ('Rohana'), setiawan ('confidant') tertuduh B pertama yang ada bersama tertuduh pertama apabila dia mengambil si mati daripada luar rumah tertuduh ketiga pada hari kejadian jenayah tersebut. Menurut PP, si mati membuat banyak lawatan ke rumah tertuduh ketiga dan mengugut untuk membuat laporan polis terhadap tertuduh ketiga tetapi bersetuju untuk tidak meneruskan dengan laporan tersebut jika tertuduh C ketiga memberi kepadanya USD500,000 dan tiket penerbangan pulang ke Mongolia untuk tiga orang. PP memberitahu tertuduh ketiga mengenai tuntutan si mati. Pada 18 Oktober 2006, si mati membuat laporan polis mendakwa gangguan dan ugutan terhadap dirinya oleh tertuduh ketiga dan PP. Pada malam 19 Oktober 2006, apabila PP sedang bertugas di luar rumah D tertuduh ketiga, si mati dan kedua-dua sepupu dan rakannya cuba untuk melawat tertuduh ketiga di rumahnya tetapi meninggalkan tempat tersebut dengan teksi yang sama apabila mereka sedar bahawa tertuduh ketiga tiada di rumah. Walau bagaimanapun, pada malam yang sama si mati kembali seorang diri dan mendesak untuk berjumpa dengan tertuduh ketiga. Apabila PP E memanggil tertuduh ketiga untuk memberitahu kepadanya situasi tersebut, tertuduh ketiga memberitahu kepadanya bahawa polis sedang dalam perjalanan untuk menahan si mati. Kemudian tertuduh pertama tiba dengan keretanya dan mengambil si mati. Walau bagaimanapun, menurut Rohana, tertuduh pertama dan si mati telah meninggalkan tempat tersebut dengan F kereta yang dipandu oleh tertuduh kedua. Pada 20 Oktober 2006, sepupu si mati dan kawannya membuat laporan polis mengenai kehilangan si mati. Pihak polis menemui mayat manusia yang dibuktikan berpadanan dengan DNA si mati. Sebab kematian si mati dikatakan kemungkinan kecederaan berkaitan dengan letupan. Tertuduh pertama dan kedua dituduh bersama G dengan pembunuhan si mati, sementara tertuduh ketiga dituduh bersubahat dalam melakukan pembunuhan si mati oleh tertuduh pertama dan kedua. Kedua-dua kes ini dibicarakan bersama. Pihak pendakwaan memohon untuk mengemukakan keterangan bahawa apabila si mati datang ke Kuala Lumpur pada 8 Oktober 2006, dia telah mengugut keselamatan anak perempuan H tertuduh ketiga demi wang, dan bahawa ini membawa kepada tertuduh ketiga bersubahat dengan tertuduh pertama dan kedua, yang merupakan pegawai polis dari unit tindakan khas, untuk membunuh si mati. Semasa perbicaraan pihak pendakwaan memohon untuk membuktikan kesnya melalui keterangan langsung, ikut keadaan, pakar, saintifik dan dokumentar. Pihak pendakwaan I juga memohon untuk memperkenalkan pengakuan yang dibuat oleh tertuduh kedua kepada pegawai atasannya; kenyataan yang dibuat oleh tertuduh pertama yang membawa kepada pasukan polis ke tempat kejadian di mana mayat si mati dijumpai; dan juga untuk mencabar kebolehpercayaan Rohana berdasarkan kepada percanggahan dalam keterangannya di mahkamah dengan

kenyataannya kepada pihak polis. Tertuduh ketiga mengemukakan afidavit bersumpah dan bergantung atas kenyataan membebaskan di dalam afidavit ini untuk menghujahkan bahawa keterangan ini telah menidakkan dan membatalkan tindakan bersubahat seperti yang didakwa terhadapnya. Di dalam pembelaannya, tertuduh pertama menyatakan bahawa dia bukanlah orang terakhir bersama si mati pada malam kejadian dan bahawa tertuduh kedua telah menghantarnya pulang ke hotel. Dalam kenyataan tidak bersumpahnya, tertuduh kedua menyatakan bahawa dia dijadikan mangsa kambing hitam (*scapegoat*) dan adalah tidak benar bahawa tertuduh pertama telah menyerahkan si mati kepadanya untuk dihantar kembali ke hotel.

Diputuskan, mensabitkan tertuduh pertama dan kedua dengan pembunuhan dan dijatuhkan hukuman mati; melepaskan dan membebaskan tertuduh ketiga daripada pertuduhan terhadapnya:

(1) Adalah undang-undang matan bahawa beban adalah pada pihak pendakwaan untuk membuktikan pengakuan tertuduh kedua kepada pegawai atasannya dibuat secara sukarela tanpa apa-apa ugutan atau dorongan. Walau bagaimanapun, berdasarkan kepada jawapan tertuduh kedua semasa *voir dire*, mahkamah ini mendapati bahawa pengakuan tertuduh kedua kepada pegawai atasannya di bawah s 24 Akta Keterangan 1950 diperoleh, secara jelasnya, melalui dorongan dan ugutan yang dikenakan oleh pegawai atasannya. Oleh sebab pengakuan yang didakwa diberikan akibat daripada ketakutan dalam minda tertuduh kedua, ia diputuskan sebagai tidak sukarela dan tidak boleh diterima sebagai keterangan (lihat perenggan 72–74 & 77–85).

(2) Walaupun penjelasan yang diberikan oleh Rohana tidak memuaskan secara keseluruhannya, kebolehpercayaannya dikembalikan apabila keterangannya dipertimbangkan bersama keterangan lain pihak pendakwaan (lihat perenggan 127).

(3) Mahkamah tidak menjalankan budi bicaranya untuk mengecualikan keterangan tertuduh pertama yang membawa pihak polis ke tempat kejadian jenayah, atau keterangan tertuduh kedua yang membawa kepada penemuan barang kemas yang dipakai oleh si mati. Mahkamah ini mendapati kedua-dua barang di bawah keterangan s 27 bersama-sama dengan keteranganlian pihak pendakwaan seperti senarai panggilan, foto analisis video forensik dan kesan darah dari dalam kereta tertuduh kedua mempunyai kesan kumulatif yang berkecenderungan mengaitkan kedua-dua tertuduh pertama dan kedua dengan pertuduhan terhadap mereka (lihat perenggan 129–130 & 139).

(4) Setelah menilai keterangan yang dikemukakan oleh pihak pendakwaan dengan penilaian maksimum, mahkamah ini mendapati bahawa jika pun tertuduh ketiga boleh dianggap sebagai mempunyai motif melihat kepada kesemua surat ugutan si mati, ia tidak boleh dijadikan alasan

A untuk mensabitkan tertuduh ketiga tanpa apa-apa keterangan langsung atau ikut keadaan mengenai penyertaannya dalam apa cara sekalipun dalam melakukan kesalahan tersebut. Oleh demikian, tidak ada kes prima facie terhadap tertuduh ketiga dan dia dengan itu, didapati tidak bersalah dan dilepaskan dan dibebaskan daripada pertuduhan B terhadapnya (lihat perenggan 145–146)

(5) Mahkamah mendapati pembelaan setiap tertuduh pada asasnya adalah penafian, menuduh satu sama lain, tidak boleh didamaikan dan berbelah bagi. Dengan itu, mereka telah gagal membangkitkan keraguan yang munasabah atas kes pihak pendakwaan. Maka mereka didapati bersalah C dan disabitkan seperti pertuduhan untuk kesalahan membunuh di bawah s 302 Kanun Keseksaan dibaca bersama s 34 Kanun yang sama dan dihukum mati (lihat perenggan 150–155).]

Notes

D For cases on admissibility of statement, see 7(1) *Mallal's Digest* (4th Ed 2011 Reissue) paras 2071–2072.

For cases on confession in general, see 7(1) *Mallal's Digest* (4th Ed 2011 Reissue) paras 854–1002.

E For cases on discrepancies in evidence, see 7(1) *Mallal's Digest* (4th Ed 2011 Reissue) paras 1210–1213.

For cases on s 302 of the Penal Code, see 4 *Mallal's Digest* (4th Ed 2010 Reissue) paras 1496–1498.

Cases referred to

F *Bala Anak Matik v PP* [2006] 3 MLJ 516, CA (refd)
Balachandran v PP [2005] 2 MLJ 301; [2005] 1 CLJ 85, FC (folld)
Chai Chien Wei Kelvin v PP [1999] 1 SLR 25 (not folld)
Chan Chwen Kong v PP [1962] MLJ 307, CA (folld)
G *Chan Kin Choi v PP* [1991] 1 MLJ 260, CA (not folld)
Chan Ming Cheng v PP [2002] 3 MLJ 733; [2002] 4 CLJ 77, CA (refd)
Dato' Seri Anwar bin Ibrahim v PP and another appeal [2004] 3 MLJ 405; [2004] 3 CLJ 737, FC (refd)
Director of PP v Ping Lin [1975] 3 All ER 175, HL (refd)
H *Francis Antonysamy v PP* [2005] 3 MLJ 389, FC (folld)
Hasibullah bin Mohd Ghazali v PP [1993] 3 MLJ 321, SC (refd)
Lim Yow Choon v PP [1972] 1 MLJ 205, FC (not folld)
Panya Martmontree & Ors v PP [1995] 3 SLR 341 (not folld)
PP v Adetunji Adeleye Sule [1993] 2 MLJ 74, SC (not folld)
I *PP v Hashim bin Hanafi* [2002] 4 MLJ 176, HC (refd)
PP v Law Say Seck & Ors [1971] 1 MLJ 149 (refd)
PP v Lin Lian Chen [1992] 2 MLJ 561, SC (refd)
PP v Mohd Farid Bin Mohd Sukis & Anor [2002] 3 MLJ 401, HC (refd)
PP v Mohd Radzi bin Abu Bakar [2006] 1 CLJ 457, FC (folld)

PP v Naikan [1961] 2 MLJ 147 (refd)
Prakash Chand v State (Delhi Administration) AIR 1979 SC 400 (refd)
R v Rennie [1982] 1 All ER 385, SC (refd)
R v Richards [1967] 1 All ER 829 (refd)
Sambu v R [1947] MLJ 16 (refd)
Shaaban & Ors v Chong Fook Kam [1969] 2 MLJ 219, PC (refd)
Syamo Maha Patro v & Anor v Emperor AIR 1932 Madras 391 (refd)
Varatharajalu v PP [1960] MLJ 158 (refd)
Yogi Choudhary v State of Bihar [2005] Cri LJ 2285 (refd)

Legislation referred to

Civil Aviation Act 1969
Criminal Procedure Code ss 26, 112, 113, 117
Dangerous Drugs Act 1952 s 37(d), 37(d)(a)
Evidence Act ss 8, Explanation 1, 24, 26, 27, 114(g)
Oaths and Affirmation Act 1949 s 13
Penal Code ss 34, 302
Penal Code [IND] ss 8, 27

Tun Abd Majid Tun Hamzah (Manoj Kurup, Noorin Badaruddin and Hanim Rashid with him) (Deputy Public Prosecutor, Attorney General's Chambers) for the appellant.
Hazman Ahmad (J Kuldeep Kumar with him) (J Kuldeep Kumar & Co) for the first accused.
Kamarul Hisham Kamaruddin (Hasnal Rezua Merican and Ahmad Zaidi Zainal with him) (The Chambers of Kamarul Hisham & Hasnal Rezua) for the second accused.
Wong Kian Kheong (Karen Lee Foong Voon and Alex Tan Chie Sian with him) (Wong Kian Kheong) for the third accused.

Mohd Zaki J:

[1] In this much publicised case, one Azilah bin Hadri, a member of the *Unit Tindakan Khas* — 'UTK' (Special Action Unit) of the Polis DiRaja Malaysia, Bukit Aman, Kuala Lumpur with the rank of Inspector of 1/14055 and Sirul Azhar bin Hj Umar of the same unit with the rank of Corporal of R/F 12559 in said the Criminal Trial No 46–3 of 2006 stand charged for the offence of murder. The charge against them reads:

> Bahawa kamu bersama-sama antara jam 10.00 malam 19 Oktober 2006 hingga jam 1.00 pagi 20 Oktober 2006 di antara Lot 12843 dan Lot 16735, Mukim Bukit Raja di dalam Daerah Petaling di dalam Negeri Selangor Darul Ehsan, dalam mencapai niat bersama kamu berdua, telah melakukan bunuh dengan menyebabkan kematian terhadap ALTANTUYA SHAARIIBUU Pasport No. E0217865 seorang warganegara Mongolia dan oleh yang demikian kamu telah melakukan satu

A kesalahan yang boleh dihukum di bawah seksyen 302 Kanun Keseksaan dibaca bersama dengan seksyen 34 Kanun yang sama.

(translation):

B (That you Jointly between 10.00 pm 19 October 2006 until 1.00 am 20 October 2006 at a place between Lot 12843 and Lot 16735, Mukim Bukit Raja in the district of Petaling in the State of Selangor Darul Ehsan, pursuant to the common intention of you both, had committed murder by causing the death of one ALTANTUYA SHAARIIBUU, a citizen of Mongolia, of passport No. E 0217865 and you have thereby committed an offence punishable under section 302 of the Penal Code, read C together with section 34 of the same Code).

[2] In Criminal Trial No 45–120 of 2006, Abdul Razak bin Abdullah of Malaysian Strategy Research Centre, stands charged for an offence of abetting D the same two accused person in the Criminal Trial No 46–3 of 2006 in the commission of the said murder. The charge against him (as amended) reads:

Bahawa kamu antara jam 9.54 pagi 18 Oktober 2006 dan 9.45 malam 19 Oktober 2006, di dalam Wilayah Persekutuan Kuala Lumpur, telah bersubahat dengan Azilah bin Hadri No. 1/14055 dan Sirul Azhar bin Hj. Umar No. R/F 125591 E untuk melakukan pembunuhan terhadap ALTANTUYA SHAARIIBUU Pasport No. EQ217865 seorang warganegara Mongolia, di mana kesalahan tersebut telah dilakukan akibat persubahatan kamu dan oleh itu kamu telah melakukan satu kesalahan yang boleh dihukum di bawah Seksyen 109 Kanun Keseksaan yang dibaca bersama Seksyen 302 Kanun yang sama.

F (translation):

(That you between the hours of 9.54 am 18 October 2006 and 9.45 pm 19 October 2006 in the Federal Territory of Kuala Lumpur did abet Azilah bin Hadri No. 1/14055 and Sirul Azhar bin Hj. Umar No. R/F 125591 in the commission of G murder of ALTANTUYA SHAARHBUU, a Citizen of Mongolia, where the said offence was committed in consequence of your abetment and you have thereby committed an offence punishable under section 109 of the Penal Code read together with Section 302 of the Code).

H **[3]** These two cases have been tried jointly and for the purpose of this single trial, Azilah bin Hadri and Sirul Azhar bin Hj Umar were referred to as the first and second accused respectively and Abdul Razak bin Abdullah as the third accused.

I **[4]** At the outset of this trial, the court had to deal with several applications made by learned counsel, namely:

(a) the application by way of motion for the production and supply of the statement recorded from witnesses under s 112 of the Criminal

Procedure Code ('112 statement') in advance of the trial (vide Criminal Application No 44–77 of 2007) made by En Kamarul Hisham, counsel for the second accused and En KK Wong, counsel for the third accused. The application of which I have rejected;

(b) the application by way of motion made by Mr Karpal Singh who is holding watching brief for the deceased's family and the Government of Mongolia for him to be granted liberty to take part in the trial, that is to examine witnesses and to make submission at the conclusion of the prosecution's case and the case of the defence (vide Criminal Application No 44–92 of 2007) which I have likewise rejected;

(c) the application by Mr Karpal Singh, summarily for the court to direct En Hazman to discharge himself from acting for the first accused for reason that his late wife was related to me in that she was my third cousin which I have again rejected; and

(d) the yet summary application by Mr Karpal Singh for me to recuse myself from presiding over this trial for the same reason as No 3 above which I have refused.

For all the aforesaid applications whereby my ruling with regard to the supply of 112 statement and my recusal were taken up for appeal, I had given my reasonings, separately in the respective case number.

[5] The prosecution in their lengthy opening statements had laid down the nature of the offence charged and the evidence by which they proposed to prove the guilt of all the accused persons. They said that the evidence would be led to show a year long affair the third accused had with the deceased. The said affair was ended in August 2005 when the third accused had since refused to see her. The prosecution sought to lead evidence that when the deceased came to Kuala Lumpur on 8 October 2006 and had threatened the life of the third accused's daughter for money, the third accused had conspired with the first and second accused to murder the deceased. The cause of death of the deceased was said to be 'probable blast related injuries'. The prosecution sought to prove all their assertion through direct, circumstantial, expert, scientific, documentary, s 27 evidence and the confession made by the second accused to his superior.

[6] In this protracted trial interspersed with two trial within a trial (voir dires), other applications and several arguments by parties on the specific issue, lasted for 165 days but not without the court having to reschedule the trial of many other older cases. The prosecution had called 84 witnesses out of 198 witnesses listed on the list of witnesses forwarded to the court whereby 114 of whom were made available for the defence.

A **[7]** At the close of the case for the prosecution, it is observed that the testimony of the witnesses for the prosecution in this case were not at all in the sequence and in the like manner of 'constructing a house'. Whereas the submission made by counsels for the defence and the reply by the prosecution were only on the specific issue of fact and law. Hence, the narration of the B factual matrix of this case considering the volume of the notes of proceeding together with 433 exhibits before the court, has been both onerous and unassailable to say the least.

C THE BACKGROUND AND EVENTS SURROUNDING THE DISAPPEARANCE OF THE DECEASED

[8] The deceased was a Mongolian woman named Altantuya Shaariibuu, aged 28 and born eldest to Mr Shaariibuu Setev ('SP2') a doctor and professor of psychology at the National University of Mongolia and Madam Altansetseg. D According to SP2, the deceased also known among family members and friends as 'Amina' was unmarried but lived in Mongolia with her two children. She worked as a translator and often travelled out of Mongolia to countries like China, Singapore, and Malaysia. She had come to Malaysia a couple of time being the first in 1995 and the second in early year of 2006. E

[9] On 8 October 2006, the deceased made her trip to Malaysia again and this time she was accompanied by her maternal second cousin Namiraa Gerelmaa ('SP3') and a friend Urintuya Gai-Ochir ('SP4'). SP3 said while she F and SP4 had wanted to enquire about the English language study in Malaysia, the deceased's visit was to meet her boyfriend 'Baginda' ('the third accused').

[10] For this October 2006's trip, all the three of them had checked into Hotel Malaya, Jalan Hang Lekir, Kuala Lumpur. For her mission of locating G the third accused, the deceased had hired a private investigator by the name Ang Chong Beng ('SP5'). SP5 had several times driven the deceased, SP3 and SP4 to the office of the third accused at the 10th Floor of Bangunan Lembaga Getah Asli, Jalan Ampang, Kuala Lumpur and to his house at Damansara Heights to see the third accused but to no avail. The third accused had refused H to see the deceased.

[11] On 19 October 2006 at about 1pm, the deceased accompanied by SP4 lodged a police report against the third accused and Balasubramaniam ('SP1') the private investigator hired by the third accused and SP1's assistant, Suras I alleging harassment and threat by them for her life.

[12] On the same day, at about 7.20pm, the deceased, SP3 and SP4 on their own had cruised through in front of the third accused's house in a hired taxi and after making a 'U turn', the deceased had wished SP1 who was standing guard

there a 'Happy Deepavali'. The deceased also asked SP1 if the third accused was home. When SP1 replied in the negative, they left.

[13] Upon arrival at the Hotel Malaya and after having left SP3 and SP4 at the hotel, the deceased had decided to return alone in the same taxi to the third accused's house. According to SP3 and SP4, the deceased insisted that she might be able to see the third accused if she were to return alone. Her said decision as it turned out proved to be last time of her being seen by SP3 and SP4.

[14] The next day, 20 October, SP3 with the assistance of Ang Chong Beng ('SP5') and the English speaking cousin of the deceased, Burma Oyunchimeg @ Amy ('SP6') who was then in Hongkong acting as a translator over the mobile phone for SP3 and SP5, had lodged a police report about the said disappearance of the deceased.

[15] Police investigation ensued. On 7 November 2006, the fragments of human bone and tissue were discovered in the secluded spot in the forest area in Puncak Alam, Selangor (within Lot Nos 12843 and 16735, Mukim Bukit Raja, Petaling) which upon the DNA analysis proved to be one of Altantuya Shaariibuu.

WHAT TRANSPIRED IN FRONT OF THE THIRD ACCUSED'S HOUSE ON THAT NIGHT OF 19 OCTOBER

[16] What had transpired there could be seived from the evidence, wherever relevant to this episode, of Balasubramaniam (SP1) and of L/Corp Rohaniza bt Roslan ('SP7'). Both SP1 and SP7 were initially remanded by police under s 117 of the CPC for the purpose of investigation before subsequently released.

EVIDENCE OF BALASUBRAMANIAM (SP1)

[17] SP1 is employed as the private investigator since leaving the police force in 1998. In early October 2006 through one Margan from the lawyer's office Dhiren, he was hired by the third accused to protect the latter's family from the threat and harassment coming from the deceased. For such assignment he was supposed to watch the third accused's daughter, Rowena going and coming back from school and to keep surveillance on the movement of the deceased at Hotel Malaya.

[18] Balasubramaniam (SP1) said that for the job assigned to him, he was assisted by one Suras and another. In the course of his assignment, he came to

A know the deceased, SP3, SP4 and SP5. He first came to know them when he met the deceased with SP3, SP4 and SP5 at the lobby of the third accused's office on 9 October 2006 and prevented them from going to the tenth floor and again when they came the next day. He had also forwarded several letters given to him by the deceased to the third accused.

B

[19] According to SP1, since the deceased had known the third accused person's house address, he had arranged for the meeting between the third accused and the lawyer, Dhiren at Restoran Nagas at Brickfields and the other meeting at Pusat Bandar Damansara together with one police officer, ASP C Suresh for them to set the plan of preventing the deceased from seeing the third accused. Since ASP Suresh could not avail himself for the said meeting, they had decided to extent SP1's assignment to include guarding the third accused's house at night and to wait until the deceased exhausted all her financial resources and had to return to Mongolia.

D

[20] On the third or fourth day of his duty guarding the third accused's house, SP1 said he saw the deceased, SP3 and SP4 passing by the third accused's house in a taxi.

E

[21] On 17 October 2006, at night, the deceased accompanied by SP5 came again and created a scene at the front gate of the third accused's house by shouting 'Razak bustard, you come out'. SP1 then asked his assistant, Suras to call police. Police arrived and took the deceased away to the Brickfields Police Station. SP1 and SP5 followed them to the same police station.

F

[22] At the police station, the deceased had wanted to lodge police report. SP1 told SP5 that the third accused did not want any unwarranted publicity. SP5 then said that the deceased was agreeable not to pursue with her report G conditional upon the third accused giving her USD500,000 and return ticket to Mongolia for three persons.

[23] SP1 said that he had informed the third accused about such demand of the deceased the next day 18 October 2006 after 12 noon and had also advised H the third accused to lodge official police report against the deceased as to enable police to detain her and also to protect the safety of all his assistants. The third accused, SP1 said had instead asked for the copy of identification card of all his assistants for them to be handed over to his police's friends.

I **[24]** On 19 October 2006, on his way to the third accused's house, SP1 received a phone call from the third accused who told him that he was going out for the breaking of fast. Upon arrival at the third accused's house and after about ten minutes of him standing guard in front of the third accused's house, the deceased with SP3 and SP4 had passed by him in a taxi and after the taxi

making a 'U turn', the deceased had wished him a 'Happy Deepavali' and left. SP1 informed the third accused over the phone about such presence of the deceased to which the third accused told SP1 to keep on watching his house in case of the deceased and her company coming again.

[25] At about half an hour later, the deceased came again in the same taxi, but by that time she was alone. SP1 said in that well lit area, he saw the deceased getting down from the taxi and approached him. SP1 then called the third accused's hand phone. The third accused asked SP1 to keep on talking to the deceased as the police was on their way to detain her. According to SP1, it was the deceased who did most of the talking when she told him about her mother was suffering from cancer and that her father had passed away. The deceased was also said to have told SP1 that she had lost her family's apartment for the gambling habit of her brother who had asked her to come down to Malaysia and asked for money to redeem her said family's apartment. SP1 also said that the deceased had no money to pay for their stay in Hotel Malaya.

[26] While listening to the deceased's said story, the first accused arrived in a red coloured private car of Proton Wira. The first accused had asked SP1 whether he was Bala and while pointing at the deceased had also asked SP1 'inikah perempuan itu' (is this the said woman). Upon asked by the deceased as to who the first accused was, SP1 said that the first accused was the third accused's relative. SP1 said that he had lied to the deceased about the identity of the first accused person for fear that the police would not able to detain her. The first accused then, according to SP1 was on his mobile phone somewhere nearby. When the first accused came back to SP1 and told him that he would be taking the deceased away, then only SP1 told the deceased that the first accused was a police officer who came to detain her. The deceased then walk on her own to the first accused's car and seated at the back seat.

[27] At about the same time, SP1 said that he saw one woman who was seated at the front passenger's seat of the first accused's car coming out and switching seats with another man who came out from the back seat of the same car. The first accused then entered into the driver's seat.

[28] At that juncture, the male Chinese driver of the taxi with which the deceased came in, one Ong Ah Hoon whom SP1 identified in court … had approached SP1 for the RM150's taxi fares the deceased had promised him for his service of transporting her there. SP1 asked Ong Ah Hoon to ask for the said fares from the first accused, Ong Ah Hoon approached the first accused and the first accused had paid him RM50 before driving away from the third accused's house with the deceased in.

[29] SP1 then informed the third accused through his handphone about the

A taking away of the deceased by the first accused to which the third accused said 'ok'. SP1 said from that time until the next day, he had received several phone calls from either SP3 or SP4 enquiring about the whereabout of the deceased.

[30] The next day, 20 October 2006 at about 2–3pm, SP1 met the third B accused at the latter's office to ask for the balance of the fees of his service. There, SP1 had asked the third accused as to which police station was the deceased taken to. SP1 said the third accused instead had asked him to guess himself. When SP1 said that it could be Travers Police Station or SB's lock-up at Jalan Ipoh, the third accused in his usual smiling self said that he himself had C no idea about it as the police was yet to inform him. SP1 further said that the third accused had asked him to continue guarding his house at night until 26 October 2006 but had relieved SP1 of his duty after 11pm on that 20 October 2006 to enable him to celebrate his Deepavali the next day.

D **[31]** SP1 said that on his way back home after that 11pm, 20 October 2006, he had received a phone call from the third accused telling him that there was a commotion in front of his house. SP1 then returned to the third accused's house and had contacted police on his way.

E **[32]** Upon arrival at the front of the third accused's house, SP1 saw Ang Chong Beng (SP5), Namiiraa Gerelmaa (SP3) and Urintuya Gal Ochir (SP4) were shouting and demanding for the release of the deceased.

F **[33]** Then, a police patrol car arrived. SP1 told the police inspector and Sgt Alias who came in the said patrol car that the deceased was not being held up at the third accused's house but had been taken away by the first accused the day before. When SP3, SP4 and SP5 had dispersed, SP1 informed the third accused through his handphone to which the latter had asked SP1 to talk about G it the next day.

[34] The next day, SP1 together with the third accused and the third accused's father went to lodge a police report at Brickfields Police Station about the said commotion staged by SP3, SP4 and SP5.

H

[35] On 1 November 2006, SP1 was called to attend the identification parade at the IPK Kuala Lumpur. In this ID parade he had identified the first accused as the person who came and took away the deceased on the night of 19 October 2006. At the sama IPK, SP1 was informed by DSP Gan Teck Guan I ('SP76') that Altantuya had been murdered. SP1 then informed the third accused about it. The third accused said he did not know about it and that he would contact the superior police officer.

[36] In the course of SP1 testifying, the prosecution had sought him to

explain the detail of text messages via SMSes involving the handphone numbers of 012-2409311, 012-2132303 and 012-3916082 contained in a telephone logs (exhs P12(1)–(224)). SP1 admitted that 012-2409311 was the number assigned to his handphone and both 012-2132303 and 012-3916082 were the phone numbers belonging to the third accused's handphone.

[37] SP1 admitted all the text messages contained in the said exhs P12(1)–(224) as one either sent out by him through his handphone to the third accused's handphone and one that he received from the third accused's handphone. They are in their original texts and abbreviation as follows:

10/17/2006 10:59:35 — MAH 82 merz my car will be at ur home replace my teksi drive P.I. Let ur guard know. Everything in orders except room in the hotel.

10/17/2006 11:30:34 Subject having lunch with her sister.

10/17/2006 12.31.20 We meet with ASP Suresh today pls let me know ur time sir.

10/16/2006 12:41.30 I will ask suresh to be here and after buka puasa I think best time.

10/17/2006 12:59:08 She back to hotel.

10/17/2006 14:12:12 Sir sorry to ask please reserve me some money for my team daily expenses. Thanks.

10/17/2006 15:46:24 hope you II stay dere forever.

10/17/2006 15:47:21 don't stay on my way, ok. Hope you loves your friend and push me, just tell don't tease me.

10/17/2006 18:53:41 Tuan suresh will late an hour. Is it ok, Sir.

10/17/2006 19:27:26 3 mongo walking out of the hotel.

10/17/2006 19:30:09 Ok. Sir, I am outside ur home.

10/17/2006 19:33:22 Yes. My men are following them now.

10/17/2006 19:35:37 Lunch yes dinner later.

20/10/2006 00:21:45 Not for a for taxi.

20/10/2006 00:26;35 He is poor man like me.

20/10/2006 00:33:43 Yes from 5 pm till she was taken away from here. He start driving at 4 pm. He regret fetch her at china town.

10/17/2006 12:41:00 Where can we meet? Pls make sure that someone is guarding my hse when ur not there. Tks.

10/17/2006 12:41:00 That ok. Let me know.

10/17/2006 13:05:44 Ok. I hope she knows that the next time she comes 2 the house she wl b arrested. Tks.

A

10/17/2006 14:21:20 How much do u nd?

10/17/2006 14:25:53 Can u discuss with dhiren now. Tks.

10/17/2006 19:33:35 No problem. I wl get dhiren 2 join 9pm.

10/17/2006 19:34:55 They could b trying 2 get 2 my house. Lets prepare.

B

10/17/2006 19:39:00 Good. Hv u eaten?

10/17/2006 19:42:02 U can eat at nagas. When u go 2 nagas, wl there b somewhere 2 look after my house.

C

10/17/2006 19:49:31 Good. Tks.

10/20/2006 0:21:30 Ok. They may turn up again. U said taxi man angry as he has not been paid?

10/20/2006 0:24:56 Why u want 2 pay for a?

D

10/20/2006 0:28:11 Why do u ask taximan 2 call u?

10/20/2006 0:32:31 U r a kind person!. A lies 2 much. Taximan another victim of a.

EVIDENCE OF LANS CORPORAL ROHANIZA BT ROSLAN (SP7)

E

[38] Lans Corporal Rohaniza is a woman Lans Corporal attached to Petaling Jaya's District Police Headquarters. She is the confidant of the first accused for nine years and was together with him at the front of the third accused's house on 19 October 2006.

F

[39] In her evidence, she said that on 19 October 2006, which was the fasting month of Ramadhan, the first accused had after work at about 6.45pm, fetched her and proceeded for the breaking of fast at the Sri Thai Restaurant in Petaling Jaya. About one hour later, they left the said restaurant for the first accused's office at Bukit Aman in her red Proton Wira Aeroback car bearing the registration number of WNV 8523. The first accused drove the car. At the said first accused's office they had repacked things for the first accused's duty to escort PM or DPM to Hongkong had been cancelled.

G

H

[40] While packing, SP7 said the first accused had received a handphone call. The first accused answered the call outside the office and when he returned, he said that he had to meet a friend at Damasara Heights and asked SP7 to wait for him in his office. SP7 insisted to follow the first accused as the latter's colleague was sleeping there inside the office.

I

[41] The first accused in his T-shirt and jean drove SP7's car to Damansara Heights. SP7 followed along. Upon arrival in front of a double storey bungalow's house at a place then not known to her, (the third accused's house)

SP7 said the first accused had pulled up the car without turning off the engine. There, SP7 saw one male Indian talking to one female Chinese at a distance of 6–7 meter from her car. SP7 identified the photograph of Altantuya the deceased (exhs P8 and P20) as the said female Chinese.

[42] The first accused alighted from the car and had approached the said male Indian. After a while the first accused had walked away on his mobile phone for about ten minutes before coming to the car and asked SP7 to sit at the back. SP7 came out from the front seat and sat at the back. At about the same time, the deceased whom she saw earlier talking to male Indian came in and sat next to her. The first accused then came and sat at the driver's seat

[43] SP7 said, as they were about to drive off, a man wearing a green cap appeared and sat in the front passenger's seat. Then a taxi driver approached the first accused and said that the deceased had yet to pay his taxi fares. The first accused gave him RM50 and drove the car away.

WHERE WAS THE DECEASED TAKEN TO

[44] According to SP7, upon approaching at the junction not far away from the third accused's house, the man in green cap asked the first accused to pull up the car by saying 'Tuan, berhenti dekat Simpang'. The man in green walked out from the car towards one dark green Vitara 4WD car parked underneath the tree. The said man got into the said Vitara and drove off passing infront of her car. The first accused then followed the same Vitara. SP7 identified the photograph of Suzuki CAC 1883 (exhs P25(1)–(6)) as similar to the said Vitara.

[45] SP7 said while in a car, the first accused advised the deceased in English not to create any scene at En Razak's house as En Razak has family and that she should see En Razak at his office if she had problems with him.

[46] SP7 further said that both the first accused and the man in green cap stopped their car along a highway towards Bukit Aman. The first accused had walked out from the car and got into the said Vitara for a while before coming back to her car. In the meantime, SP7 had shifted seat by sitting at the front seat of the car. At that juncture the deceased had asked her who they were to which the first accused said 'we are police'.

[47] The man in green cap drove his Vitara. The first accused followed behind. On their way, SP7 had asked the first accused where was he taking the deceased to. The first accused responded that she was to be sent back to hotel.

A When SP7 said that she could not follow along as she had an earlier appointment with her friends, the first accused said that they would only then follow the said Vitara.

B **[48]** Upon arrival at UTK's office at Bukit Aman, both the man in green cap in the Vitara and first accused pulled up without turning off the engine. The first accused walked towards the Vitara and talked to the man in a green cap before coming back to SP7's car. The first accused then opened the door of the seat where the deceased was seated. The female Chinese got out of the car and the first accused talked to her for a while. They both then walked towards C Vitara seat. The first accused opened the front passenger's door of the Vitara for the deceased. The said Vitara then left Bukit Aman through gate A with the said deceased in it.

D WHERE DID THE FIRST ACCUSED GO TO

[49] The first accused according to SP7 did not get into the said Vitara but had instead asked her to drive her car for the appointment that she had. She then drove her car alone leaving Bukit Aman. At the same time, she said that E she saw the first accused was walking towards the UTK's office. According to SP7, on her way home from Bukit Aman at about 9pm she was in contact over the handphone with the first accused. She asked the first accused where he was. The first accused said that he was still at Bukit Aman. Upon reaching home, SP7 with her friend PC Ros Aliza and Nor Azean proceeded to the Las Vegas F Karaoke in Bukit Bintang Kuala Lumpur. When she was there after 11pm, SP7 said the first accused had called her over the handphone and asked her to fetch him at either Jalan Duta or Rawang's Tol Complex. She did not immediately proceed to fetch the first accused as requested until she realised there were three missed calls from the first accused in her handphone before the first accused G called again and asked her to go to UTK, Bukit Aman.

[50] SP7 drove to Bukit Aman and upon reaching UTK's office after 12midnight, she did not get to meet the first accused. She rang him up and the first accused asked her to wait for him for he was then with his friend. SP7 fell H asleep inside her car for about ten minutes before the first accused came and knocked on the screen of her car and requested her to help him carrying his bags and hanger. According to SP7, the first accused was then in a different dress from one she last saw him wearing when they came back from the third accused's house in Damansara. The first accused said that he had to meet his I friend when SP7 asked what held him up for turning up late.

[51] From Bukit Aman, SP7 sent the first accused to Putrajaya and left him there at about 1am on the 20 October 2006 before she returned home. Upon reaching home she had called the first accused informing him about her having

reached home.

MAXIS TELEPHONE LOGS ('EXH P12') AND CELCOM TELEPHONE LOGS (P27(1)–(10)) AND NICER LOGS (EXH P28(A)–(P))

[52] According to SP7, her phone number was of 012-3723584 and the other was of 019-3331824. She said that all the times that she in contact with the first accused was through his handphone of number 019-3636153. Upon being shown with the Maxis telephone logs (exh P12), and Celcom telephone logs (exh P27(1)–(10)), she confirmed that all the transaction relating to her handphone ie 012-3723584 and the first accused's ie 019-3636153 were one of either she made the call out to or sent the text messages via SMS to the first accused or that of the first accused called or SMS to her handphone beginning from 19 October 2006 at 21:28:03, 22:43:13, 23:50:29 and on 20 October 2006 at 00:25:31, 01:25:58, 01:30:22, 01:44:26 and 01:59:05 and also confirmed the record as shown in this exh P12 that the first accused did call her on 19 October 2006 at 23:28:46 and that she had received SMS from the first accused on the same date at 23:40:13, 23:44:33, 23:54:07 and 23:56:21 and also at 00:06:24, 00:08:36, 00:11:34, 00:22:51, 00:29:31, 01:24:16, 00:06:24, 00:08:36, 00:11:34, 00:22:51, 00:29:31, 01:24:16 and 01:30:21. When shown with the NICER Logs (exhs P28(A)–(P)), she also confirmed that the transactions that was shown in this logs between No 019-3636153 and 019-3331824 were one between the first accused to her other handphone.

THE BEHAVIOUR OF THE FIRST ACCUSED AFTER 20 OCTOBER 2006

[53] SP7 said after that 20 October 2006 she had met the first accused several times including one during *Hari Raya* where she met the parents of the first accused at Sg Pelek, Sepang. According to SP7, while in his parent's house, the first accused was not in his usual self. On their way back to Putrajaya from Sg Pelek, she did not ask the first accused about the female Chinese but only asked him why was he unusually quiet, to which the first accused said he was worried about the female Chinese whom they had picked up the night before and said he was puzzled as to how the said female Chinese had suddenly disappeared.

[54] According to SP7, two or three days thereafter, she had called both the Travers and Brickfield's Police Station enquiring from them whether there was any case of a sudden death report on a foreign female Chinese or of her being kidnapped and raped.

IMPEACHMENT ON SP7

[55] So smooth and plain the evidence of SP7 it may appear to be, but her

A credibility sought to be impeached by the prosecution premised upon her contradiction of her oral evidence in court with her s 112's statement given to police. They are as follows:

(a) in her evidence she maintained that the first accused did not get into the Vitara car and left Bukit Aman with the deceased and the man in green cap whereas in her statement, she said the first accused did get into the same car;

B

(b) in her evidence she said that on the way to Putrajaya from Sg Pelek, she did not ask the first accused about the woman while in her statement she said she asked four times;

C

(c) In her evidence she said the first accused replied that he was puzzled as to how the woman suddenly disappeared when she asked the first accused why he appeared so worried whereas in her statement she said the first accused said 'tidak apa-apalah' (nothing happened) when asked;

D

(d) in her evidence that she enquired from police station whether there was any foreign Chinese woman lodged a report of kidnapping or rape whilst in her statement said she enquired about kidnapping or killed; and

E

(e) in the evidence she said the first accused called her and asked her to pick him up at Rawang or Jalan Duta Toll Plaza. While in her statement she said it was either Sg Buloh or Jalan Duta Plaza.

[56] SP7 when asked to explain about the said contradictions said as to (a) above that she was confused and pressured into saying in her statement that was recorded after her release from the 14 days remand and the first accused get into the said car and that she was so depressed then as she was help up in a hotel and was not allowed to meet anyone. As to (b) above, her simple explanation was that she could not remember what she said in her statement. As to (c) above, she maintained that when the first accused said he was puzzled about the said Chinese woman sudden disappearance and said 'tidak apa-apalah' meant the same thing. As (d) above, she said that she could not remember whether the recording officer did ask about her enquiry on that woman being raped and to (e), she said that when the first accused asked her over her handphone to pick him up at the toll, it was so noisy as she was then in a karaoke lounge and could not figure out the toll as referred to by the first accused of either Sg Buloh or Jalan Duta, but did not know why did she say 'Rawang Toll' in court.

F

G

H

[57] In her cross-examination by counsel, SP7 said that she was confused as there were many statements recorded from her by different recording officers. She further said while on remand she was abused and promised to be released if she were to agree to say that the first accused did get into the car.

I

[58] I must admit, quite contrary to many other cases of impeachment on

the credibility of the prosecution's witnesses that I have come acrossed both the counsels for the first accused and the third accused urged the court to accept the explanation of SP7 as being both satisfactory and reasonable or alternatively to accept the other part of her evidence even if she were to be impeached. I have reserved my ruling on her impeachment until after the hearing of all the other evidence of the prosecution.

IDENTITY OF THE DECEASED

[59] I have no reason to doubt the credibility and reliability of all the prosecution's witnesses with regard to the recovery of fragments of human bone and tissue in the said forest area in Puncak Alam, the handling of those bones to the hospital and, the reconstruction of them into a human structure. I also have no reason to doubt the reliability and the accuracy of the DNA analysis done on all those bone, hair and tissue which led to the conclusion that they belong to Altantuya.

[60] The evidence was adduced that those fragment of bones and tissue were collected by a team comprises of a Crime Scene Investigation Unit headed by Supt Amidon ('SP58') and the Ballistic Unit headed by DSP Mohamad Koey ('SP59') and Dog Unit ('K9') under the supervision of Dr Mohd Shah, the forensic pathologist ('SP70'). Those bones and tissue which have been systematically labeled were handed over to ASP Tonny Ak Lunggan, the investigating officer ('SP75') and handed them on two occasion to Dr Mohd Shah.

[61] At Hospital Kuala Lumpur, both Dr Mohd Shah and Dr Nurliza, the forensic consultant and anthropologist ('SP72') had reconstructed those highly fragmented bones into a human structure (vide photo P377) and confirmed that save for one non-human bone, they matched the remains of an individual. According to Dr Nurliza, in view of metric of the humorous, pelvis, scapula and clavicle bones, the remains was 89%–91% probability of an adult woman. Dr Nurliza further of the view on the auricular surface, the estimated age of the said woman was between 24–35.

[62] Dr Mohd Shah had also took the specimen swabs from the same bone fragment, tissues and hairs and had them sent by the investigating officer to the Chemistry Department, Petaling Jaya for DNA analysis.

[63] The Director of Forensic Division of the Chemistry Department, Petaling Jaya, Mr Primulapathi ('SP39') upon analysing on the these specimen confirmed that the deceased was the biological daughter of Setev Shaariibuu and S Altansetseg. SP 39 also analysed some samples of hairs ('Z11A') from P170B ('Z11') which he had used up during analysis and found mt DNA

A profile of the deceased on Z11A.

THE CAUSE OF DEATH

B **[64]** Dr Mohd Shah after having examined the remains certified that the cause of death was 'probable blast related injuries'. The ballastic expert DSP Muhamad Koey ('SP59') who was in the search team together with Dr Mohd Shah confirmed that there was a blast of high explosive at the scene where those highly fragmented bones were collected. En Shaari ('SP40'), the head with C Firearms and Tool Marks Unit with the Chemistry Department, Petaling Jaya who examined the exhibits collected at the scene and found some high explosive substance on some hair sample sent ie P218 A, P221 A, P170B, P222A and P223A.

D THE CONFESSION

[65] The prosecution sought to introduce the confession' of the second accused purportedly made voluntarily to ACP Mastor bin Mohd Arif ('SP11') the then commander of Unit Tindakan Khas (UTK). SP11 said on the E 4 November 2006, he was directed by Deputy Commander II, Crime Investigation Department, Dato' Syed Ismail to go and bring back the second accused who was then on duty escorting the honorable Prime Minister for his official visit to Pakistan. En route their flight to KLIA after a transit in Bangkok, ACP Mastor said the second accused had confessed to his F involvement in this case. This part of SP11 evidence of was spontaneously objected to by the entire team of defence on the ground that such alleged confession being involuntarily made. The court had then embarked on the voir dire to determine on the issue of the admissibility of such alleged confession.

G **[66]** At the end of the voir dire, it was argued on behalf of the second accused that the alleged confession was inadmissible for want of statutory caution under ss 26 and 113 of the Criminal Procedure Code (CPC) administered by ACP Mastor when the second accused was clearly then under his custody and that he had prior knowledge about the second accused's involvement in this H case when he told the latter that 'cerita ini telah terdedah dan tidak ada apa-apa nak disembunyikan' (this story has been exposed and there is nothing to hide).

[67] ACP Mastor in his cross examination admitted that the second accused I was under his custody and care throughout the journey from Pakistan to malaysia and that he would arrest the second accused if the latter tried to escape at the two places of transit in Lahore and Bangkok.

[68] Brown J in *Sambu v R* [1947] MLJ 16 said:

> There is nothing technical about being in custody. A person is in custody when he is in a state of being guarded and watched to prevent his escape. In order to answer the question of whether the appellant was in custody at the time when he is alleged to have made the statement, it is only necessary to consider what would have happened, if at that time he had tried to run away ….

[69] In Privy Council case of *Shaaban & Ors v Chong Fook Kam* [1969] 2 MLJ 219 it was held:

> An arrest occurs when a police officer states in terms that he is arresting or when he uses force to restrain the individual concerned. It occurs also when by words or conduct he makes it clear that he will, if necessary, use force to prevent the individual from going where he may want to go ….

[70] But Augustine Paul in his book of 'Practice and Procedure', (2nd Ed) said:

> That however is not meant as a general test. The word must not be detached from their context and read as applicable in all circumstances. The must be read as governed and qualified by the particular facts of the case in which they occur.

[71] Now, in our case today, it must be remembered that the second accused was not in Pakistan for his personal reason such being on vacation but was on official duty of escorting the honourable Prime Minister for his official visit to Pakistan. Therefore there is nothing sinister about his return flight ticket had been reserved for him by ACP Mastor. To my mind, to conclude that the second accused was then under arrest or police custody simply because the backpack was put on the second accused and that he being escorted to go to toilet at the place of transit is stretching too far. Where and what else could the second accused do in Pakistan when his duty had been relieved? I am therefore of the view that the second accused was not then under the arrest or custody of police within the definition of which as envisaged in s 26 and s 113 of the CPC. Hence the question of ACP Mastor 'having' failed to administer the 'statutory caution' as contended by learned counsel for the second accused does not arise.

VOLUNTARINESS OF THE CONFESSION

[72] The law with regard to confession to a person in authority is governed by s 24 of the Evidence Act 1950, which reads:

> A confession made by an accused person is irrelevant in a criminal proceeding if the making of the confession *appears to the court* to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a *person in authority* and *sufficient in the opinion of the court* to give the accused person grounds which would *appear to him* reasonable for

A supposing that by making it he would gain any advantage or avoid any evil of temporal nature in reference to proceeding against him.

[73] As oppose to s 26 of the Evidence Act 1950, whereby confession by the B accused while in custody of police could only be proved if it is made in the immediate presence of a session judge or magistrate, a confession to a person in authority under s 24 of the same Act has no reference to the accused being under arrest or in the custody of the police.

C **[74]** It is trite law that the onus is for the prosecution to prove that the alleged confession was made voluntarily without any threat, promise, inducement and oppression. The majority decision of the Federal Court in *Dato' Seri Anwar bin Ibrahim v Public Prosecutor and another appeal* [2004] 3 MLJ 405; [2004] 3 D CLJ 737 in dealing with the confession of the second appellant in that case had quoted with approval the judgment of the Court of Appeal in *Chan Ming Cheng v Public Prosecutor* [2002] 3 MLJ 733; [2002] 4 CLJ 77 in that there is no burden on an accused person to prove that the statement recorded from him is involuntarily. The burden lies on the prosecution to show positively that the E statement was voluntarily given. So long as the suspicion is reasonable as to the voluntariness of the statement, it is incumbent on the trial judge to hold it inadmissible.

F **[75]** In the House of Lords case of *Director of Public Prosecutor v Ping Lin* [1975] 3 All ER 175, it was held:

> Where an objection was raised in criminal proceedings to the admission of an alleged confession by the accused, the onus was on the prosecution to satisfy the judge beyond reasonable doubt that the statement in question had been made G voluntarily by showing that it had not been obtained either by fear of prejudice or hope of advantage excited or held out by a person in authority. The judge had to determine the issue as one of fact and causation ie whether the crown had proved that the statement had not been made as a result of something said or done by a person in authority. It was not sufficient for the crown to shown that the person in H authority had not intended to extract a confession or that there had been no impropriety on his part. What was necessary was to show, as a matter of fact, that the statement in question had not been obtained in consequence of *something said* or *done by him* which amounted to an express or *implicit* threat or promise to the accused.

I

[76] In *Hasibullah bin Mohd Ghazali v Public Prosecutor* [1993] 3 MLJ 321, the Supreme Court quoted with approval the judgment of *R v Richards* [1967] 1 All ER 829 which held:

> Whatever be the nature of the inducement so made however trivial it may seem to the average man to have been, such an inducement will be least capable of rendering the statement then made inadmissible.

[77] Now, ACP Mastor in his evidence at the voir dire admitted that en route KLIA on the plane from Bangkok he had arranged both Sgt Jelina and Corp Zamri who accompanied him for his said mission to bring back the second accused, to 'sandwich' the second accused sitting in between them. As pre-planned, ACP Mastor moved to sit next to the second accused once both Sgt Jelina and Corp Zamri shifted their seat for him to tell the second accused the true reason why he was required to be brought back to Malaysia. ACP Mastor admitted that he had then informed the second accused of the true reason of him being relieved of his duty and that was, the second accused was known to be involved in the murder of Altantuya and said he had asked the second accused in the following words:

> Saya bertanya dan mengharapkan jawapan daripada Tertuduh (Sirul Azhar). Saya bertanya dan meminta beliau menceritakan hal sebenar. *Saya kata cerita ini telah terdedah dan Azilah telah memberitahu cerita sebenar dan tidak ada apa-apa yang nak disembunyikan.* Sirul Azhar agak lambar memberikan response iaitu dalam 2-3 minit. Dalam masa 2-3 minit tersebut saya bercadang untuk bertanya beliau lagi jika beliau tidak response selepas 2-3 minit tersebut ….

[78] It is clear from ACP Mastor's own words as aforesaid that he did not only inform the second accused of the actual reason of him required to be brought back to Malaysia but went beyond that by asking the second accused to tell him the truth ('menceritakan hal sebenar'). Clearly to my mind that his act of wanting the second accused to tell him the truth about this case went far beyond what he was assigned to by Dato' Syed Ismail, the Director of Criminal Investigation.

[79] The second accused himself said at voir dire that he had regarded the said questioning by ACP Mastor in his commanding tone as an 'order' from his superior for him to answer, failing which a disciplinary action might be taken against him and that his mind was so confused as he had earlier being informed of a matter involving his wife as the reason for him being relieved of his duty.

[80] Now, what needs to be asked is, would the second accused being an 'operative' in UTK proceed to confess of his involvement in this case, had he not be so 'ordered' by ACP Mastor, his superior? Further, would the second accused likewise responded to ACP Mastor had it not for his words 'cerita ini sudah terdedah, Azilah telah memberitahu cerita sebenar, dan tidak ada apa yang nak disembunyikan'. (This story (this case) has been exposed. Azilah has revealed the actual story and there is nothing to hide).

A **[81]** Voluntary in ordinary parlance means of one's own free will (*R v Rennie* [1982] 1 All ER 385). In the case of *Public Prosecutor v Naikan* [1961] 2 MLJ 147, it was held:

> The words 'you better tell the truth' and equivalent expressions have acquired a fixed meaning as if a technical term and have always been held to impart a threat or promise.

B

[82] In the case of *Public Prosecutor v Law Say Seck & Ors* [1971] 1 MLJ 149, it was held:

C

> One should be able to say that without it, the person would not have made a statement. The inducement, threat or promise need not be express but may be implied from the circumstances of the case. *If for example a person in authority says that the truth has come out and that every one knows about it and tells the accused that he better says what he knows,* this itself may amount to an inducement and threat.

D

[83] Learned DPP implored upon the court to adopt the approach taken by the court in Singapore as decided in the cases of *Chai Chien Wei Kelvin v Public Prosecutor* [1999] 1 SLR 25 and *Panya Martmontree & Ors v Public Prosecutor* [1995] 3 SLR 341 where it was held:

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> more recently, however, it has been held that the question whether words to the effect 'you had better tell the truth' import a threat and inducement should be approached in a common sense way and in the context of the individual case. Thus, where a police officer reminded a witness that he should tell the truth and not tell lies, that did not constitute a threat or inducement.

F

[84] To my mind, with respect, the approach as was taken in the said *Chai Chien Wei Kelvin* and *Panya Martmotree*'s case must be seen in the context of the fact of those cases. Further, if the words 'you had better tell the truth' must be approached in a common sense way as aforesaid I find it difficult to adopt the same approach for the words 'cerita ini sudah terdedah, tiada apa yang nak disembunyikan'.

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[85] For the forgoing reasons, without having to unnecessarily dwell on the lengthy list of cases on the exclusionary discretion that is applicable in the United Kingdom and the, I am of the firm view that there was an obvious inducement and threat inflicted by ACP Mastor in procuring the said confession from the second accused. It is a clear case of the alleged confession being actuated by fear in the mind of the second accused exacted by ACP Mastor.

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Accordingly the alleged confession is held to be involuntarily made and inadmissible as evidence.

INFORMATION LEADING TO THE DISCOVERY OF FACTS (AGAINST THE FIRST ACCUSED)

[86] Next, the prosecution sought to introduce the evidence of the information leading to the discovery of fact purportedly made by the first accused to Ch Insp Koh Fei Choew ('SP20').

[87] According to SP20 on 6 November 2006 at about 5.20 pm he took the first accused out form the lock-up to his office at IPK Kuala Lumpur while interviewing him, the first accused was said to have informed him 'dia boleh membawa saya untuk cuba mencari tempat kejadian perempuan Mongolia dibunuh tetapi OKT tidak tahu tentang nama kawasan dan kurang pasti lokasi tempat kejadian'. Following this information SP20 with his three other personnels and the first accused left IPK Kuala Lumpur in Police's Pajero WKN 7008 proceeded towards the scene led by the first accused. According to SP20 on their way to the scene they had to pull over several times as the first accused himself was not certain of the route before arriving at the scene at secluded spot in the forest area in Puncak Niaga Ampangan Tasik Subang Selangor at about 6.50pm. There according to SP20, the first accused told him 'Inilah tempatnya perempuan Mongolia diletupkan' and 'Inilah tempat perempuan Mongolia ditembak'. These informations according to SP20 were recorded in his investigation dairy.

[88] The prosecution sought to admit these informations under s 27 of the Evidence Act 1950. These are plethora of cases that discussed on the true application of s 27. It is trite, that s 27 is based on the view that if a fact is actually discovered in consequence of information given some guarantee is afforded thereby that the information is true, but the foremost condition to that is that the police must not have prior knowledge of the same information supplied by the accused.

[89] In Federal Court case of *Francis Antonysamy v Public Prosecutor* [2005] 3 MLJ 389, it was held:

> (3) Section 27 is independent and is not subject to the voluntariness rule in s 24. However, informations supplied under s 27, which had been found to be involuntary may be excluded by the court in the exercise of its discreation (*Goi Ching Ang v Public Prosecutor* [1999] 1 MLJ 507 followed). The party that is seeking to have evidence excluded is the exercise of the discretion of the court has the onus of showing, on the balance of probabilities, that the discretion should be exercised in its favour.

at p 404F, Augustine Paul JCA delivering judgment for the Federal Court said:

A

> Since voluntariness is not a condition of admissibility of information supplied under s 27 the privilege against self incriminating which is manifested in an involuntary statement or in a statement made in breach of the requirements of s 112 must be deemed to have been impliedly abrogated insofar as s 27 is concerned …

B

and at para 32 of his judgment, Augustine Paul JCA has made a reference to the case of *Public Prosecutor v Mohd Farid Bin Mohd Sukis & Anor* [2002] 3 MLJ 401, which quoted Kerry Stephens who in his book entitled *Voir Dire* at p 58 says:

C

> It follows that the party seeking the exclusion of the evidence must satisfy the court that the circumstances are such that the court should exercise its discretion in favour of the party making the application. The appropriate way of dealing with an application of this nature is by way of a trial within a trial (see *Smith v R* (1957) 97 CLR 100; *R v Bradshaw* (1978) 18 SASR 83; *R v Dugan* (1984) 2 NSWLR 554 Street CJ expresses the view that a judge, in considering an application of this nature … 'must necessarily act upon such evidence as is placed before him either in the substantive trial or on the voir dire or both'.

D

[90] Guided by the ruling enunciated in the *Francis Anthonysamy*'s case, I have granted the application made by learned counsel for the first and the second accused to have voir dire in favour of excluding the said evidence of the said informations under s 27 by the first accused which I had on 11 June 2008 ruled to be admissible as evidence.

E

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[91] The voir dire was conducted towards the end of the trial after which the prosecution closed its case. The first accused himself testified in the said voir dire. In his evidence, he said he did not make the said statement and did not lead police party to the discovery of the scene at Puncak Alam. He further, said that the police party took him to the said scene against his will and that the police had obtained the information from other sources that was the telephone call logs and that he was brought to the said scene led and guided by a brown coloured Pajero.

G

[92] Since the prosecutions closed its case immediately after the conclusion of the said voir dire, the decision on the exclusion of the said evidence of s 27 was reserved until after the submission by both parties is heard together with the main submission at the end of the prosecution's case.

H

EVIDENCE OF 'CONDUCT' UNDER S 8 OF THE EVIDENCE ACT 1950

I

[93] The prosecution also sought to admit through ASP Zulkarnain bin Samsudin ('SP23') the words of the second accused while pointing at the particular spot at the scene to the effect 'Itulah tempat perempuan itu

diletupkan', under s 8 of the Evidence Act 1950. According to SP23 on 6 November 2006, at about 5.30pm, he had followed a team of police led by ASP Tonny together with the second accused to the scene. Upon arrival at the scene, he saw Ch Insp Koh Fei Cheow was already there with the first accused. SP23 said as all of them got down from his Pajero, the second accused pointed to him at one bushy spot nearby and said at the same time 'Itulah tempat perempuan itu diletupkan'. The prosecution while conceding that such words was not an information under s 27 but contended that it was a statement coupled with the act of pointing to or showing, hence admissible under s 8 of the Evidence Act 1950, ie the proviso to Explanation 1.

[94] The Explanation 1, under s 8 of the Evidence Act 1950 reads:

> The word 'conduct' in this section does not include statements unless those statements accompany and explain acts other than statement …

[95] In *Syamo Maha Patro v & Anor v Emperor* AIR 1932 Madras 391, Pandalai J expresses his personal view about the possibility of recognising the statement admissible under s 8 explaining conduct which is itself admissible, from another class of exceptions like those which fall under s 27. Nevertheless, in view of the other evidence in that case he himself set aside and omitted from consideration the evidence of 'conduct' in that case.

[96] On the contrary, Reilly J in the same case said:

> Statement admissible under that s 27 can still be proved, but all other statements of accused persons made to the police in the course of investigation are shut out.

[97] The fact in *Syamo* is case may compendiously be put as follows:

> The appellant upon being questioned, told sub. Inspector something (which on the ruling of the Full Banch must be excluded from evidence) and then took police to his house. The appellant also made a statement (which must be excluded for the same reason) and then gave up some jewellery which had been identified as that which the deceased had been wearing when she disappeared. Afterwords, both of the appellant led police to a tank where appellant pointed out some long grass, in which the deceased was found.

[98] Waller J in the same case at p 403:

> Through the statements made by the appellants are inadmissible, evidence of their conduct is certainly admissible under s 8 of the Evidence Act. I accept that evidence as true and find it proved that the first appellant took the sub Inspector to the second appellant's house, that second appellant gave up the murdered girl's jewel and that first appellant pointed out the place where the body was found.

A **[99]** Here, I observed that such admission of evidence of conduct is only relates to the evidence of conduct simpliciter that is the bare act of showing at or of pointing out or of leading to the discovery of fact without more.

[100] In the case of *Prakash Chand v State (Delhi Administration)* AIR 1979 B SC 400, it was held at p 333:

> What is excluded by s 162 of the CPC is the statement made to a police officer in the course of police investigation and not the evidence relating to the conduct of an accused persons (not amounting to a statement) when confronted or questioned by a police officer during the course of investigation. For example, the evidence of the C circumstances simpliciter, that an accused person led a police officer and pointed out the place where stolen articles or weapons which might have been used in the commission of the offence were found hidden would be admissible as conduct under s 8 of the Evidence Act, irrespective of whether any statement by the accused contemporaneously with or antecedent to such conduct falls within the purview of D s 27 of the Evidence Act.

[101] Back home, Augustine Paul J (as he then was) in the case of *Public Prosecutor v Hashim bin Hanafi* [2002] 4 MLJ 176 said at p 191:

E

> The question that PW4 (police officer) asked the accused at the scene was whether he had any incriminating articles in his custody and control. The response of the accused was his act of pointing out at exh P7–PW4 by signs. The act was merely a response to a question to the question that was asked and not a direct answer to it. Thus the interpretation to be accorded to the act of the accused is that it does not F mean that he agreed with the question. The information that is admissible against him is therefore only his bare act of pointing out the dangerous drug to PW4. It amounts to the evidence of conduct. Where an accused produces the weapon of attack or points out the place of its concealment his conduct itself is tentamount to making a statement or conveying information and is admissible under s 27 of the Evidence Act 1950. (Emphasis added.)

G

[102] The court of Appeal in *Bala Anak Matik v Public Prosecutor* [2006] 3 MLJ 516, ruled 'that the law clearly permits such evidence of pointing to the parang as shown in P32D' without more to be admitted as conduct under s 8 H of the Evidence Act 1950. (Emphasis added.)

[103] From the above cases referred to as can clearly be seen the evidence of conduct that was admitted in both cases of *Hashim bin Hanafi* and *Bala Anak Matik* is only the bare act of pointing out, without more. Although in *Prakash* I *Chand*'s case it was held that irrespective of whether any statement by the accused contemporaneously with or antecedent to such conduct falls within the purview of s 27 of the Evidence Act 1950, but the prosecution themselves in the present case, conceded that the said statement of the second accused is not admissible under s 27, and rightly so, as the same scene was already by then

discovered upon the information led by the first accused. I am not therefore prepared to consider the said statement made by the second accused as evidence of conduct under s 8 of the Evidence Act 1950 and it is therefore inadmissible.

INFORMATION LEADING TO THE DISCOVERY OF FACT (AGAINST THE SECOND ACCUSED)

[104] The prosecution again sought to introduce the evidence of information leading to the discovery of fact and this time purportedly made by the second accused to Ch Insp Koh Fei Cheow (SP20) and ASP Zulkarnain bin Samsudin (SP23).

[105] According to SP20, on 7 November 2006 at about 2pm, he together with SP23 interviewed the second accused in SP23's office at IPK Kuala Lumpur. In the course of interviewing him, SP20 said the second accused had told him and SP23 certain information relating to the jewellery of the deceased.

[106] SP23 reading from his police report ('exh P76') which contains the said information said, the second accused told him 'Saya boleh tunjukkan barang kemas milik perempuan (xxxxx), ada saya simpan di dalam rumah saya di Kota Damansara'. (The sentence in xxxxx has been mutually agreed by the prosecution and defence to be excluded for being highly prejudicial.)

[107] SP23 said after he adduced the said information into his police report (exh P76) he had arranged for the *Unit Pemusnah Bom* (The Bomb Disposal Unit) to assist in searching the second accused's house. He also informed DSP Gan upon which DSP Gan told him that the key to the second accused's house was kept by the UTK unit, Bukit Aman and that he would arrange for the said key to be taken to Kota Damansara.

[108] SP23 then together with SP20 and his personnel proceeded to Kota Damansara guided by the second accused. Upon arrival at the car park of Apartment Block 5, Jalan Chamar 4/1, Gugusan Semarak Seksyen 4, Kota Damansara, they met DSP Yusri and the other personnels from the UTK. According to SP20, Sgt Rosli from the said UTK handed over a bunch of key ('exh P36') to the second accused's house to him before he passed it over to SP23.

[109] The second accused then led SP23 and his team together with the the Bomb Disposal Unit to his house of No 5–3–7 at the third floor. Guided by the second accused SP23 used the key to the pad lock attached to the grill and the wooden door of the said house. Inside the house, SP23 said, the second accused

A led his team to his unlocked room and taking out from inside the unlocked cupboard in his room, a black jacket. According to SP23, while taking the said jacket out, the second accused told him 'saya simpan barang kemas di dalam jacket'. Acting on this information SP23 searched the jacket and discovered from inside its pocket, a lady wrist watch of 'Larmens' brand with the series B number of 940004B ('exh P16B'), a pair of earring with one of which was without the stud ('exh P17B') and one gold ring ('exh P18B').

[110] SP23 further added that he had placed all those three items he discovered on the bed and asked the second accused 'Adakah ini barang-barang C kemas yang dimaksudkan?'; to which the second accused nodded his head and pointing his finger at the same items and contemporaneously said 'inilah barang dia' (as shown in photograph — 'exh P601'.)

D **[111]** As the relevant information that have been recorded as forming part of the evidence, similarly as in the case of the alleged s 27 evidence against the first accused, the defence team sought the court to exercise its discretion to exclude the said informations. I have similarly allowed the said request.

E **[112]** In a voir dire, the second accused himself testified and had called Sgt Rosli and DSP Yusri to testify for him. The second accused in his evidence essentially claimed that he never gave such information relating to the jewellery of the deceased, to SP20 and SP23. On the contrary, the second accused claimed that it was SP23 who told him the following words, that is 'Macam F inilah Sirul, kalau engkau setuju, engkau ikut aku, kau camkan barang-barang itu, kau pegang dan tunjuk ke arah barang itu sambil camera man ambil gambar'. According to the second accused SP23 also said that he would help him not to have his case brought to court. It was only, then SP23 and the police team took him to his house at No 5–3–7, Kota Damansara. The second G accused further contended that set of key ('P36') that SP23 used to unlock the padlock and grill to his house is not his set of keys which he had passed over to Supt Mastor onboard the flight from Bangkok to KLIA.

[113] The second accused again said that inside his room his house, SP23 H had forced him to hold one black jacket for the purpose of him being photograph twice. SP23 then took out some items from inside the same jacket and placed them in the bed before forcing him to point by his finger at all those items again for the purpose of photographic.

I IMPEACHMENT ON DSP YUSRI

[114] In the course of this voir dire, the prosecution sought to impeach the credibility of DSP Yusri ('TWD3') who testified for the second accused on account of his oral evidence clearly contradicted his 112's statement ('exh

P100'). The said oral evidence that is said to be in conflict with the highlighted parts of his 112's statement are as follows:

(a) he said that he did not see the second accused being taken into his room whilst in his statement he said he was not sure;

('Saya tidak nampak Tertuduh Kedua dibawa masuk ke dalam biliknya')

(b) he said that he was sure that when D9 was searching the second accused's room, the second accused was not in the said room whilst in his statement he said that he was not sure;

('Saya pasti yang Tertuduh Kedua tidak berada di dalam bilik semasa pasukan D9 membuat pemeriksaan')

(c) he said that it was not true that he was allowed to search the second accused's room after D9 had completed their search of the same whilst in his statement he said that he only entered the second accused's room after D9 had completed their search;

('Tidak benar yang saya hanya dibenarkan masuk ke bilik tersebut selepas pasukan D9 tamat membuat pemeriksaan')

(d) he said that he was not sure when Unit Pemusnah Bom entered to carry out their task whilst in his statement he said Unit Pemusnah Bom entered to search after D9.

('Tidak pasti Unit Pemusnah Bom hanya masuk ke bilik tersebut kemudian selepas pasukan D9 membuat pemeriksaan').

[115] DSP Yusri (TWD3) in explaining the said contradiction said he was nervous and flustered as he had never given evidence in court being this was the first time in his 16 years of service in the UTK and PPH (Pasukan Polis Hutan). He further explained that he could not really recollect of what he has said in his statement as his statement was recorded only on 2 August 2007 for the event that took place on 7 November 2006. Again, he explained that he did not really pay particular attention of what took place in the said second accused's house as his duty then was just to collect the official items of UTK from the second accused.

[116] The ruling on both these evidence of s 27 and on the impeachment was reserved. The former subject to the submission of parties and the letter subject to the hearing of all the other witnesses for the prosecution.

CALL LOGS

[117] In the course of conducting the trial of this case, much time was spent

A on the evidence of call logs ie, the call transactions between the first accused, the second accused and the third accused that had been recorded in the system of two different telcos namely Celcom and Maxis. These evidence came through Syed Mustaqim bin Syed Yusoff ('SP26') the IT analyst with Celcom, Mohd Firdaous bin Mohd Omar ('SP61') the executive in the special project B and investigation of Celcom, Haizal bin Hambali ('SP63') the technical specialist with celcom and Nik Kamarudin bin Nik Ka ('SP64') the GM core network operation, Celcom. Through these witnesses this court was referred to thousand of data contained in exhs P370, P27, P375 and P12 under the specific column called LAC (local area code), SAC (service area code), cell ID C call type MOT and Voice MTC in respect of two switches ie 2G and 3G. An example of 3G would be MSSC (C1) while GKLJ for 2G or GSM.

[118] From the relevant data, the prosecution had tabulated the record of communications between the first accused (016-3636153) and the third D accused (012-2132303/012-3910842) between the first accused and the second accused (012-2473286) and between the third accused (012-2132286/012-3910842) and Balasubaramaniam (SP1) between 18 October 2006–3 October 2006 as follows:

E 18/10/2006

Azilah to Razak

P27 9:13:08 (T1 — outgoing — 71 secs at C_SOONFATT [p.2/10]

F P12 09:13:14 (T3 - incoming -72 secs) [p.9]

Razak to Azilah

P12 09:33:52 (T3 — outgoing —1 sec) [p.31]

G P27 9:33:59 (T1 — incoming — 0 sec at C_BGNGETAHASLI) [P.2/13]

Azilah to Razak

H P27 9:35:25 (T1—outgoing—0 sec at C_BGNGETAHASLI) [-2/14]

P12 09:35:24 (T3—incoming—0sec) [p.9]

Azilah to Razak

I P12 09:50:05 (T3 — outgoing —30 sec) [p.31]

P12 09:49:57 (T1 — incoming — 0 sec at C_BGNGETAHASLI) [P.2/15]

Meeting between Azilah and Razak

Razak to Azilah

P12 11:51:35 (T3 — outgoing — 30 secs) [p.31]

P27 11:51:28 (T1 — incoming — 3 secs - voicemail - not available [p.3/1]

Azilah to Razak

P27 11:56:24 (T1 — outgoing — 63 secs at C-BSARSHOWROOM) [p.3/5]

P12 11:56:30 (T3 — incoming — 64 secs) [p.9]

Azilah to Razak

P27 12:11:11 (T1 outgoing — 79 secs at CJvlJDSAIDINAOMAR) [p.3/10]

P12 12:11:19 (T3 — incoming — 80 sec) [p.9]

Razak to Azilah

P12 13:07:15 (T3—outgoing—300 secs) [p.31]

P27 13:07:07 (T1—incoming—294 secs at C_MIRAMARHOTEL) [p.3/22]

Azilah to Razak

P27 15:20:49 (T1—outgoing—78 secs at C_PLZDAMANSARA) [p.4/10]

P12 15:20:56 (T3—incoming—79 secs) [p.9]

19/10/2006

Sirul to Azilah

P12 13:33:01 (T2 — outgoing — 17 secs) [p. 182]

P27 13:32:44 (T1—incoming—18secs at SEMUA_HOUSE_OD) [p.5/27]

Razak to Bala

19:19:17 (T3—outgoing sms) [P12 p.33/129]

Bala to Razak

19:33:19 (SP1—outgoing—150 secs) [P13 p.153/10]

Azilah to Razak

A P27 19:57:15 (T1 — outgoing — 103 secs at C_TMPJCENTRAL) [p.6/25]
P12 19:57:22 (T3 —incoming —104 secs) [p.10]

Bala to Razak

B 20:35:13 (SP1 —outgoing sms) [P12 p.153/10]

Razak to Azilah

P12 20:36:06 (T3 — outgoing — 30 secs) p.33
C P27 20:36:11 (T1 — incoming —10 secs at BUKIT_AMAN) [p.6/27]

Razak to Bala

20:36:36 (T3 — outgoing — 30 secs) [P12 p.33/129]

D Azilah to Sirul

P27 20:36:53 (T1 — outgoing — 30 secs at BUKIT_AMAN) [p.6/28]
P12 20:37:01 (T1 — incoming — 30 secs) [p.173]

E Razak to Bala

20:37:55 (T3 — outgoing sms) [P12 p.33/129]

Bala to Razak
F
20:38:53 (SP1 — outgoing sms) [P12 p.153/10]

Razak to Bala

G 20:39:17 (T3 — outgoing sms) [P12 p.33/129]

Bala to Razak

20:40:25 (SP1 —outgoing sms) [P12 p.153/10]

H Razak to Bala

20:40:46 (T3 — outgoing sms [P12 p.33/129]

Razak to Azilah

I P12 20:41:47 (T3 — outgoing — 30 secs) p.33
P27 20:41:52 (T1 — incoming — 11 secs at BUKIT_AMAN) [p.6/29]

Azilah to Sirul

P27 20:47:28 (T1 — outgoing — 23 secs at CJTMDSARA) [p.6/33]

P12 20:47:49 (T2 — incoming — 24 secs) [p.173]

Sirul to Azilah

P12 20:49:13 (T2 — outgoing — 53 secs) [p.182]

P27 20:48:21 (T1 — incoming — 53 secs at CJTMDSARA) [p.6/34]

62831: Entered through KOTA DAMANSARA and exited through JALAN DUTA at 8:48:32 pm. [20:48:32]

Azilah to Razak

P27 20:54:17 (T1 — outgoing — 22 secs at C_PLZADAMANSARA) [p.6/35]

P12 20:54:25 (T3 — incoming — 23 secs) p.11

Razak to Azilah

P12 20:54:17 (T3 — outgoing — 30 secs) p.33.

P27 20:54:54 (T1 — incoming — 9 secs — voicemail — not available) [p.6/37]

Azilah to Razak

P27 20:54:54 (T1 — outgoing —1 secs at C_PLZADAMANSARA) [p.6/36

P12 20:55:00 (T3 — incoming — 3 secs) p.11

Razak to Azilah

P12 20:55:25 (T3 — outgoing — 60 secs) p.33

P27 20:55:31 (T1 — incoming — 44 secs at CJ_MSJDDSAIDINAOMAR) [p.6/39]

Sirul to Azilah

P12 21:00:33 (T2-outgoing - 87 secs) [p.182]

P27 20:59:06 (T1 — incoming — 88 secs at C_MSJDSIDINAOAMR) [p.6/40]

Azilah to Sirul

P27 21:03:35 (T1 — OUTGOING —12 secs at C_PLZADAMANSARA) [p.7/1]

P12 21:03:41 (T2 — incoming —13 secs) [p.173]

Azilah to Razak

P12 21:08:35 (T3 — outgoing — 30 secs) p.33

A P27 21:08:40 (T1 — incoming — 23 secs at C_MSJDSIDINAOAMR) [p.7/2]

Azilah to Sirul

P27 21:10:13 (T1 — outgoing — 44 secs at BANSATOUTDOOR) [p.7/3]

B P12 21:10:26 (T2—incoming —45 secs) [p.173]

Bala to Razak

21:10:18 —sms (Outgoing from Bala to T3 at 0123916082) [P12 p.153]

C 21:10:18 —sms (Incoming to 0123916082 from Bala) [P12 p.49]

Sirul to Azilah

P12 21:14:36 (T2 — outgoing — 9 secs) [p.182]

D P27 21:14:28 (T1 — incoming — 8 secs at JLNDUTA) [p.7/4]

Sirul to Azilah

P12 21:20:50 (T2 — outgoing — 28 secs) [p.182]

E P27 21:20:23 (T1 — incoming — 27 secs at C_SAPURATOWER) [P.7/5]

Azilah to Razak

P27 21:41:20 (T1 — outgoing — 40 secs at TOLL JLN DUTA) [p.7/7]

F P12 21:41:41 (T3 — incoming — 41 secs)p.11

62830: Entered through JALAN DUTA and exited through KOTA DAMANSARA at 9:57:23 pm. [21:57:23]

G 20/10/2006

Azilah to Razak

P27 10:41:27 9T1 —outgoing — 32 secs at PARCELA2-WPPJ) [p.8/16]

H P12 10:41:35 9T3 — incoming — 33 secs) [p.11]

Razak to Bala

22:17:33 (T3 — outgoing sms) [P12 p.33/129]

I Bala to Razak

23:55:03 (SP1 — outgoing sms to T3's 0123916082) [P12 p.153/49]

Razak to Bala

23:55:20 (T3 — outgoing sms) [P12 p.33.129]

Bala to Razak

23:56:47 (SP1 —outgoing sms) [P12 p.154/11]

Bala to Razak

23:57;45 (SP1 — outgoing sms) [P12 p.154/11]

Bala to Razak

23:58:47 (SP1 — outgoing sms) [P12 p.154/11]

And T3 further communicated with T1:-

20/10/2006

Azilah to Razak

P27 10:41:27 (T1 — outgoing — 32 secs at PARCELA2_WPPJ) [p.8/16]
P12 10:41:35 (T3 — incoming — 33 secs) p.11

21/10/2006

Razak to Azilah

P12 00:22:56 (T3 — outgoing — 30 secs) p.33
P27 00:28:24 (T1 — incoming — 2 secs - voicemail - not available) [p.9/34]

Razak to Azilah

P12 00:23:36 (T3 — outgoing — 30 secs) p.33
P27 00:29:04 (T1 — incoming — 2 secs - voicemail - not available) [p.9/35]

Razak to Azilah

P12 00:24:14 (T3 — outgoing — 30 secs) p.33
P27 00:29:41 (T1 — incoming — 2 secs - voicemail - not available) [p.9/36]

Razak to Azilah

P12 00:25:53 (T3 — outgoing — 30 secs) p.33
P27 00:31:20 (T1 — incoming — 3 secs - voicemail - not available) [p.9/37]

Razak to Azilah

A P12 00:27:21 9T3 — outgoing — 30 secs) p.33

P27 00:32:48 9T1 — incoming — 2 secs - voicemail - not available) [p.9/38]

Razak to Azilah

B P12 00:28:46 (T3 — outgoing — 30 secs),p.33

P27 00:34:00 (T1 — incoming — 2 secs - voicemail - not available) [p.9/39]

Razak to Azilah

C P12 00:29:32 (T3 — outgoing — 30 secs) p.33

P27 00:34:46 (T1 — incoming — 2 secs - voicemail - not available) [p. 10/1]

Razak to Azilah

D P12 00:31:30 (T3 — outgoing — 30 secs) p.33

P27 00:36:44 (T1 — incoming — 3 secs - voicemail - not available) [p. 10/3]

Razak to Azilah

E P12 00:32:56 (T3 — outgoing — 30 secs) p.33

P27 00:38:23 9T1 — incoming — 3 secs - voicemail - not available) [p. 10/4]

Razak to Azilah

F P12 00:52:50 (T3 — outgoing — 30 secs) p.33

P27 00:58:05 (T1 — incoming — 1 sec - voicemail - not available) [p.10/7]

Razak to Azilah

G P12 01:29:10 (T3 — outgoing — 120 secs) p.35

P27 01:34:37 (T1 — incoming — 99 secs at TNB_JIMAH) [p. 10/10]

Razak to Azilah

H P12 01:43:02 (T3 — outgoing — 90 secs) p.35

P27 01:48:29 (T1 — incoming — 72 secs at TNBJIMAH) [p.10/13]

Note: 12 calls were made. Only the last 2 were successful.

I 22/10/2006

Razak to Azilah

P12 22:06:40 (T3 — outgoing —1 sec - sms) p.36

P370 22:06:52 (T1 — incoming — 0 sec) [p.20]

28/10/2006

Azilah to Razak

P370 11:45:05 (T1 — outgoing —127 secs) [p.43]

P12 11:45:11 (T3—incoming—128 secs)

30/10/2006

Azilah to Razak

P27 11:31:09 (T1 — outgoing — 2 secs) [p.50]

P12 11:31:17 (T3— incoming —2 secs)

Azilah to Razak

P27 12:58:05 (T1 — outgoing — 214 secs) [p.50]

P12 12:58:12 (T3—incoming—216 secs)

COVERAGE PLOT AND BEST SERVER PLOT

[119] In addition to the record of communication as tabulated above, SP63 on the 16 June 2007 together with ASP Tonny ('SP75') and DSP Gan (SP76) had gone to several places to determine the particular or the best serving station that captured the test call he made based on the data in exh P372B ie relating to the handphone of 0193636153 beginning from 19 October 2006 at 20:54:17 (p 3 of 22 in P372B) till 19 October 2006 at 23:53:17 (p 4 of 22 in P372B). For that purpose he used his tools called 'drive measurement tools' and he began his journey form Bukit Aman to Bangsar and back to Bukit Aman before proceeded to Kota Damansara via TOL at Jalan Duta, then to NKVE before exited TOL Kota Damansara to Puncak Alam via Sungai Buloh old road to the scene of this case before coming back to Bukit Aman.

[120] According to SP63, upon completing all such 'test-calls' he came up with a chart called 'coverage prediction' of the base station (exh P374(1)-(17)) which shows the movement of the first accused, the user of the said hand phone 0193636153 between 19 October 2006 at 20:54:17 till 23:53:17.

[121] These evidence of call logs and coverage plot were vigorously challenged by the defence on the ground that they are not authentic, being altered or tampered with, inaccurate and unreliable.

A **[122]** As for me, I must admit that these data and their operation as explained by all those witnesses are highly technical. Thus, in the absence of other rebuttal witness or witnesses, I am accepting the evidence of SP61, SP62, SP63 and SP64 on the face of it. All the four of them testified as to the creation, production, arrangement and validation of those logs, the data of which were B retrieved from their data system.

OTHER RELEVANT EVIDENCE

C **[123]** The other relevant evidence adduced by the prosecution are:

(a) the notes ('exh P21A') that were found by the deceased's cousin, Burmaa Oyunchimeg aka Amy (SP6) when she did the packaging of the deceased's bag before leaving Malaysia for Hong Kong on 21 November 2006. SP6 confirmed the handwriting in this notes to be of the decesed's D and the notes read:

> Dear all Malaysian government or police or embassy of Mongolia, or newpapers.
>
> … I came to Malaysia to see my boyfriend Mr. Razak Abdullah Baginda. E He married and live with his daughter Rowena and wife and parents …
>
> I have been visiting his house and office, because I needed to see him, yes I asked from him money, but I have reason. I'm nice person, I can't hurt someone, But Mr. Razak … trying to scare me, trying to kill me. He send his two Indian men to follow me, one of them Suraj Kumar, he been F coming to my hotel room every morning around 5.00 a.m and knocking door, trying to scare me. … They been following me for 4–5 days, even my hotel, where I staying, workers know.
>
> That time I really scared, I have some problem now time, Mr, Razak Baginda promised to help me when I was Mongolia, That's why I came to G see him and for help. …
>
> Yes, maybe I did mistake to bother him to blackmail him, but if he didn't promise to me I would never come from far away to Malaysia. Only reason I'm here is I asking help form Mr. Razak.
>
> I got PI, private investigator, Mr. Hoh. But today he told me, that Indians H could kill and three put put down from window. And before I writed letter I'll suicide myself, because I have no choice, he told that they have letter's so they kill me and says she suicide.

(b) the record of CCTV of the Hotel Malaya Kuala Lumpur capturing the I presence of the first accused and the second accused at the said hotel on the 18 October 2006 between 4.50pm–5pm. Sup Amidon bin Aman ('SP58') identified the image of a male shown in the still photo ie P340A to be the first accused and P340B and C as the second accused. According to SP58, the still images as shown in P48E are also the image of both the

first and the second accused who were seen at the eighth floor of the same hotel. Loo Mow Chan ('SP17') operation manager of the same hotel confirmed P48E was captured by his CCTV camera placed at the eighth floor of the hotel;

(c) the evidence of traces of blood stains on the slippers ('exh P53C') that was found from inside the second accused's car ie Suzuki 4WD No CAC 1883 (as shown in photos P25 (1–6)). The said slippers were recovered on 9 November 2006 by Sup Soo Me Tong ('SP42'), Ketua Bahagian Kimia, Makmal Forensik, PDRM Cheras. Upon analysis, the chemist Mr Primulpathi ('SP39') confirmed the said traces of bloodstain as one from the same maternal lineage of that of the deceased;

(d) the evidence of the smart tag device slot ('P150B') and T&G card ('P150C') that were also recovered from inside the second accused's car by the same SP42. According to Wan Abdullah bin Wan Ali ('SP34'), the executive with Rangkaian Segar Sdn Bhd that produced Kad Pintar, Touch n Go', based on the record called the 'Card Ownership Detail Reports' for T&G manufacturing No 1831039713 (P115&P119) belonged to the RF 125591 Sirul Azhar Hj Umar. Further according to SP34 based, on the said P119/P115, the movement of the car using the said smart tag were as follows:

19.10.2006

62833 Entered through Kota Damansara and exited through Jalan Duta at 7:14:47 a.m

62832 Entered through Jalan Duta and exited through Kota Damansara at 6:06:35 p.m

62831 Entered through Kota Damansara and exited through Jalan Duta at 8:48:32 p.m

62830 Entered through Jalan Duta and exited through Kota Damansara at 9:57:23 p.m

20.10.2006

62829 Entered through Kota Damansara and exited through Jalan Duta at 12:01:26 p.m

(e) the recovery of a spent cartridge ('exh P185B') from inside the second accused's car by the same SP42. The said spent cartridge of 9 mm SME 06, was examined by Shaari bin Desa ('SP40'), the chemist who upon doing the ballistic test concluded that the said spent cartridge had been discharged from the machine gun HK-MP55D ('exh P263A'). The said machine gun, according to WPC Fatimah bt Abd Wahab ('SP15'), the

A constable incharged of Amoury of the UTK Bukit Aman, was issued to the second accused on 4 October 2006 and was returned only on 30 October 2006;

(f) that the traces of soil ('exh P184B') taken by the same SP42 from the mud flap and the rim of the second accused's car was upon comparison by the chemist with the samples of the soil taken at the scene was negative;

B

(g) the evidence of forensic video analysis photograph ('exh P274A–L') adduced through Mohd Zobri Adil bin Talib (SP49), *juruanalisa* Digital Forensic Kana with Cyber Security Malaysia (formerly known as NISER). He had analysed the Hi Rev Storage media tape (exh P122) which was taken from the CCTV placed at the Plaza Tol Kota Damansara which he received from ASP Tonny (SP75) on 11 June 2007. According to SP49 based on the said forensic video analysis photograph, the car as appeared in P274(B), (E) and (I) was the same as Suzuki CAC 1883 based on the consistency of the unique similarities. He further said, the said car had passed through the said Plaza Tol on 19 October 2006 at 7:14:40am, 8:48:55pm, 10:03:53pm and 11:55:36pm on the 19 October 2006;

C

D

E

(h) the recovery by SP23 of the notes ('exh P80A') from inside the bag of the first accused kept inside his office. The writings in the said notes had been confirmed by the document examiner ('SP30') to be consistent with the handwriting specimens of the third accused (exh P105 (A1-A5) and (B1-B5)) save for one at the middle part. The said notes read:

F

> Datuk Abdulah Malim Baginda 22,
> Jalan Setiajaya Damansara
> Height 50490 Kuala Lumpur
> 012-2132303
> [illegible] Room 823
> Hotel Malaya
> Jalan Hang Lekir
> Aminah

G

(i) that according to Loo Mow Chen ('SP17'), the Operation Manager of Hotel Malaya, Altantuya Shaaribuu, based on their guest registration form ('exh P46') was staying at the same hotel beginning the 9 October 2006 and the room number assigned to her was 817; and

H

(j) that Uurintuya Gal-Ochir ('SP4'), a friend who came to Malaysia together with the deceased has identified the pair of earring ('exh P17B') and the gold ring ('exh P18B') to be one belonging to the deceased.

I

THE SWORN AFFIDAVIT OF THE THIRD ACCUSED (EXH P436)

[124] Towards the end of the trial, the prosecution decided to tender the

affidavit sworn by the third accused that had been filed to court (*Mahkamah 1*) on 5 January 2007 for the purpose of his application for bail in the Originating Summons No 45–120 of 2006. Through the *Timbalan Pendaftar*, Wan Mohd Norisham bin Wan Yaakob ('SP81'), the said affidavit was produced and marked as exh 'P436'. With the concession of the learned DPP and learned counsel for the first accused, the averment at paras 34(b) and 36 of this affidavit which said to be highly prejudicial to the first accused was excluded.

[125] The relevant paragraphs that SP8 was asked to read are paras 17, 18 and 19 which clearly show a self admitted averment of the third accused of his relationship with the deceased. They are as follows:

> 7. Saya bermula kenal dengan Si Mati ('Hubungan tersebut') pada lebih kurang bulan November 2004. Saya telah menamatkan Hubungan tersebut pada lebih kurang bulan Ogos 2005.
>
> 18. Semenjak saya menamatkan Hubungan tersebut, Si Mati mula-mula meminta duit daripada saya. Kemudiannya, Si Mati juga mula memeras ugut (blackmail) saya mengenai Hubungan tersebut.
>
> 19. Pada lebih kurang bulan April 2006 saya telah membuat keputusan untuk tidak lagi tunduk kepada peras ugut Si Mati ('Keputusan tersebut'). Saya membuat Keputusan tersebut kerana saya tidak lagi khuatir sama ada Si Mati akan mendedahkan (expose) Hubungan tersebut atau pun tidak. Tambahan pula, saya juga tidak mahu terus membayar Si Mati. Mulai dari masa itu, Si Mati telah mengganggu (harass) saya melalui telefon dan surat. Selanjutnya, pada lebih kurang bulan Ogos 2006, Si Mati telah mengugut untuk datang ke Pejabat saya.

RULINGS ON THE SPECIFIC ISSUE (AT THE END OF THE PROSECUTION'S CASE)

[126] Having heard the submissions from both the defence and the prosecution, the following are my rulings on the specific issue raised, which ruling had been reserved to be decided at this stage.

THE APPLICATION TO IMPEACH THE CREDIBILITY OF SP7 (ROHANIZA BT ROSLAN)

[127] It is my ruling while the explanation advanced by SP7 may not be absolutely satisfactory but considering her evidence as a whole, and the evidence of the rest of the prosecution's witnesses, I accept all her explanations as aforesaid. It is generally perceived that a witness in giving a contradictory oral evidence with one of his or her statement to police is labouring under misapprehension that the said evidence would be favorable for or prejudicial against the party he or she testifying for. In this case, apart from SP7 saying that the first accused did not get into the Vitara car and left Bukit Aman with the

A deceased yet she remained consistent that the first accused called her after 11pm on the same night and asked her to pick him up at either Rawang or Jalan Duta Tol Plaza, which would mean that the first accused was not at Bukit Aman during the relevant period. This part of her evidence is corroborated by the record of the call logs and the coverage prediction (exh P374(1)–(17). To B my mind, whether the Tol Plaza is one of Rawang or Jalan Duta is immaterial. In the premise, the credibility of SP7 is saved and restored.

THE APPLICATION TO IMPEACH THE CREDIBILITY OF TWD3 C (DSP MOHD, YUSRI BIN HASSAN BASRI)

[128] It is my ruling that while the said explanation of the TWD3 may not be absolutely satisfactory but his credibility considering the evidence of the other prosecution's witnesses and that the said police statement was recorded D about ten months after the event, is to that extent, restored and saved. To my mind all his answer of 'tidak pasti' (not sure) in both his statement and oral evidence in court may mean either way.

E THE APPLICATION FOR THE COURT TO EXERCISE DISCRETION TO EXCLUDE THE INFORMATIONS OF S 27 AGAINST THE FIRST ACCUSED

F **[129]** Having considered all the issues raised by the first accused, I have no reasons to doubt the credibility and reliability of Ch Insp Koh Fei Cheow's evidence that the first accused who is also a police inspector and the investigation officer himself did in fact supply the information as aforesaid and that Ch Insp Koh Fei Cheow had no prior knowledge of the particular place of G the scene. I therefore find it difficult to exercise my discretion to exclude them.

THE APPLICATION FOR THE COURT TO EXERCISE DISCRETION TO EXCLUDE THE INFORMATIONS OF S 27 AGAINST THE SECOND ACCUSED

H

[130] Having considered all the issues raised for the second accused, I find that the second accused has succeeded in showing the shoddy and slip shod manner in the investigation of some officers and the inconsistencies in the I evidence of the prosecution's witnesses. To my mind, while inconsistencies in the testimony of the witnesses is expected, the fact remains that the said 'barang-barang kemas' were discovered consequence to the said informations supplied by him. I therefore likewise refuse to exercise my discretion to exclude them.

THE SWORN AFFIDAVIT OF THE THIRD ACCUSED (EXH P436)

[131] The prosecution had contended that the tendering of the said affidavit amounts to no acceptance on their part of the truth of what is stated therein, reliance being placed on the ruling by Federal Court in *Balachandran v Public Prosecutor* [2005] 2 MLJ 301, which held:

> it is settled law that an *exculpatory statement cannot from the basis of an order in favour of an accused person at the close of the case for the prosecution* as the accused, not having given evidence at that stage, cannot rely on the statement without it having been tested by cross examination.

adopting the approach in the Singapore's case of *Chan Kin Choi v Public Prosecutor* [1991] 1 MLJ 260, which ruled that:

> … It was not the law in Singapore that the exculpatory statements *in a confession used by the prosecution as part of its evidence* were admissible as evidence of the truth of the contents thereof.

and also *Lim Yow Choon v Public Prosecutor* [1972] 1 MLJ 205 where the Federal Court answered:

> In our judgment, in reference to the cautioned statement we are of the view that *notwithstanding that the cautioned statement was part of the evidence for the prosecution,* and that there are facts in the cautioned statement which appear to contradict other parts of the evidence led by the prosecution, it was still open to the trial court as a judge of facts to assess the evidence and in so doing accept part of it and reject the rest. *It would not necessarily follow as a matter of law, that in the circumstances of the case, the trial court should acquit the appellant at the close of the case for the prosecution by reason of such contradictory evidence in the case for the prosecution.*

[132] Learned counsel for the third accused person submitted that such ruling is only applicable to the extent that it is not sufficient by itself to discharge the onus lying on the accused to rebut the statutory presumptions under s 37(d) and s 37(d)(a) of the Dangerous Drugs Act 1952 as was so ruled by the Supreme Court in *Public Prosecutor v Adetunji Adeleye Sule* [1993] 2 MLJ 74 and *Public Prosecutor v Lin Lian Chen* [1992] 2 MLJ 561 and the said cases apply a fortiori to the present affidavit which is now forming part of the case for the prosecution.

[133] It is clear to me, that all the judicial pronouncement by the Supreme Court and Federal Court as aforesaid are those pertaining to a cautioned statement and a confession ie a cautioned statements in the cases of *Lim Yow Choon, Balachandran*, *Adetunji Adeleye Sule*, *Lin Lian Chen* and a confession in the case of *Chan Kim Choy*. Whereas this affidavit (exh P436) in the present case is one that was sworn before the commissioner for oath Mr Wong Ah Ying

A who is one of the witnesses made available by the prosecution to the defence. Thus, unlike the cautioned statement and confession, this affidavit is not part and parcel of the investigation process. The sworn statement is instead governed by the Oaths and Affirmations Act 1949. Section 13 of this Act provides:

B

> Every person giving evidence on any subject before any Court or person authorized by the Act to administer oaths and affirmation shall be bound to state the truth on such subject.

C **[134]** Since this affidavit is now forming part of the case for the prosecution, it is my view therefore, that its entire contents including the exculpatory part must be given the due weight as it is given to the rest of the evidence for the prosecution. Therefore, the question of deferring or suspending the consideration of its weight to a later stage of the proceeding merely for the purpose of getting him to repeat them does not arise.

D

PRIMA FACIE

E **[135]** Having considered the evidence adduced by the prosecution in its totality, I am satisfied and it is therefore my findings that:

(a) the fragment of bones collected at the scene were one of the Altantuya Shaariibuu's, the deceased;

F (b) the cause of death of the deceased was probable blast related injuries and the probable time of death was between 10pm on 19 October 2006 till 1am on 20 October 2006;

(c) all the reference of 'perempuan Cina' by Lans Corp Rohaniza (SP7) is actually Altantuya, the deceased;

G (d) all the reference of 'Vitara' by SP7 is actually 'Suzuki 4WD', that is the second accused's car bearing the registration number of CAC 1883;

(e) all the reference of 'a man in green cap', is actually the second accused; and

H (f) I accept the evidence of Sup Amidon (SP58) that the image of male shown in the still photo of P340A to be the first accused and of P340B & C to be the second accused.

I **[136]** I agree with the submission of learned DPP that the traces of blood stain found the slippers from inside the second accused's car could not possibly be planted there for it's recovery was on the 9 November 2006 whereas the remains of the deceased was found on the 6 November 2006 without any traces of fresh or dried blood and that the blood specimen of the deceased's father,

Shaariibuu Setev (SP2) was taken only on the 10 November 2006. With respect, I also see the logic in learned DPP's remark that the police could have easily put the soil taken from the scene on the said Suzuki CAC 1883 had they really wanted to frame the second accused.

[137] The way the deceased came about her death is very tragic indeed. There can be no doubt that whoever perpetrated this despicable and unthinkable act of blasting on the deceased must have intended to completely vanish the related evidence into the thin air. Whatever his motive was, it is a matter of law that the 'motive', although relevant has never been the essential to constitute murder. The question for which I am to determine at this stage is who could have possibly connected with the death of the deceased.

[138] I begin by asking, what was both the first and second accused doing at Hotel Malaya on the 18 October 2006? All the more to be at the eighth floor, the same floor where the deceased's room was located. Further, what was the first accused's instruction to the second accused when he shifted the deceased from his car into the second accused's car before the second accused left Bukit Aman? Then, why did he the next day turned to be unusually quiet and yet told Rohaniza (SP7) that Altantuya had suddenly disappeared. I may endlessly ask why and why.

[139] All the question as aforesaid, to my mind taken together with the said respective evidence of s 27 against the first accused which led to the discovery of the scene and the remains of the deceased and of the second accused which led to the discovery of jewelleries of the deceased, and the evidence of the call logs, card ownership detail report, forensic video analysis photographs, the coverage and best server plot, along with the evidence of spent cartridge and traces of blood stain found from inside the second accused's car, have the cumulative effect of tending to connect both the first and second accused to the charge against them.

[140] As for the third accused, having ruled on the status of the affidavit ('exh P436') as aforesaid, I now reproduce the relevant exculpatory parts of the said affidavit. They are as follows:

> Para 25:Walaupun saya telah melantik PB (P. Balasubramaniam), namun gangguan oleh Si Mati ke atas saya dan keluarga saya masih berterusan. Oleh itu, saya meminta bantuan tambahan daripada seorang pegawai poll's bernama DSP Musa bin Haji Safri ('DSP Musa'). Saya dapat berkenalan dengan DSP Musa semasa saya mengendalikan urusan rasmi 'Malaysaia Strategic Research Centre' ('MSRC') suatu pertubuhan bukan kerajaan (non-government organization) yang bukan membuat untung (non-profit).
>
> Para 26:Saya telah meminta DSP Musa ('Permintaan kepada DSP Musa') untuk:
>
> (a) *membantu dalam pemasangan suatu peti surat 'Polis' di rumah bapa saya yang beralamat di atas* ('Rumah Saya') di mana saya tinggal bersama-sama dengan keluarga saya;

A (b) saya juga meminta bantuan DSP Musa *untuk membolehkan pihak polis menghantar kereta polis untuk meronda* sekitar Rumah Saya; dan

(c) memperkenalkan seorang pegawai polis yang bertugas di IPD Brickfields (Rumah Saya terletak dalam bidang kuasa daerah polis tersebut) untuk membantu mengenai gangguan oleh Si mati.

B

Para 27: DSP Musa memberitahu saya *bahawa beliau akan membantu dengan memperkenalkan terkemudiannya seorang pegawai polis* untuk membantu saya.

Para 28: Pada 16 Oktober 2006 dalam suatu perjumpaan antara saya dengan PB dan DN (Dhiren Norendra) ('Perjumpaan dengan PB dan DN'), PB telah menyarankan aduan dibuat untuk megusir (deport) Si Mati dari Malaysia. Saya dan DN menolak cadangan ini dengan tegas.

C

Para 29:Pada sebelah pagi 17 Oktober 2006, Si Mati telah datang ke Rumah saya untuk cuba berjumpa dengan saya, dan 'lawatan' ini ('Lawatan Rumah') diketahui oleh MM (Mazlinda bt. Makhzan). Saya tidak berada di Rumah saya pada masa itu.

D

Para 30: Pada sebelah malam 17 Oktober 2006, saya berada di Rumah saya bersama-sama dengan Keluarga saya apabila terdapat kekecohan di Luar Rumah saya ('Kekecohan Pertama').

E

Para 31: Saya terus memanggil telefon bimbit DSP Musa (019-2692011) tetapi malangnya saya gagal menghubunginya. Selepas itu, saya memanggil PB dan DN untuk membantu. Akibatnya, sebuah kereta polis tiba di Rumah saya dan menyelesaikan Kekecohan Pertama. Saya tidak membuat laporan polis mengenai Kekecohan Pertama kerana DN tidak menasihati saya untuk membuat demikian.

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Para 32:DSP Musa kemudiannya menelefon saya dan memberitahu bahawa seorang pegawai polis akan menelefon saya untuk menghulurkan bantuan mengenai gangguan oleh Si Mati. Menurut DSP Musa, pegawai polis yang akan memanggil saya kenal Ketua Bahagian Siasatan Jenayah Daerah Brickfields ('KBSJD').

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Para 33:Saya kemudiannya berjumpa dengan AH ('Perjumpaan dengan AH') di pejabat saya di mana:

(a) saya telah memberitahu AH tentang Kekecohan Pertama;

(b) …

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(c) Selepas teguran Pertama saya, AH menanya bagaimana AH boleh membantu mengenai gangguan oleh Si Mati. Saya meminta bantuan AH agar:

(i) *Pihak polis boleh meronda sekitar Rumah Saya. Untuk tujuan ini, saya memberi maklumat mengenai alamat Rumah saya,* nama bapa saya, nama Si Mati, 'Hotel Malaya' di mana Si Mati tinggal (mengikut maklumat yang diberi oleh PB kepada saya); dan

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(ii) Memperkenalkan seorang polis di daerah Brickfields kepada saya;

(d) Saya memberitahu AH mengenai perlantikan PB serta memberi nama dan nombor telefon bimbit PB (012-2409311) kepada AH; dan

(e) Sebelum AH meninggalkan Pejabat Saya, AH telah meminta saya memaklumkan jika Si Mati mengganggu saya atau Keluarga Saya terkemudiannya ('Permintaan AH').

Para 35: Pada 19 Oktober 2006, PB menelefon saya. Pada masa itu saya berada di luar Rumah saya bersama-sama dengan keluarga saya berbuka puasa. PB memberithau saya bahawa terdapat kekecohan sekali lagi di luar Rumah saya ('Kekecohan Kedua'). Memandangkan permintaan AH, saya terus menelefon AH untuk meminta tolong.

Para 36: …

Para 37: PB kemudiannya memberitahu saya bahawa 3 orang polis berpakaian preman telah datang ke rumah saya dalam sebuah kereta yang tidak ditandakan 'Polis' dan telah membawa Si Mati bersama-sama dengan mereka dalam kereta itu. *Saya percaya anggota-anggota polis tersebut telah membawa Si Mati ke balai polis untuk disoal oleh pihak polis.*

Para 38:Pada 20 Oktober 2006, saya telah pergi ke pejabat TPM atas urusan rasmi dan telah bertembung dengan DSP Musa ('Perjumpaan dengan DSP Musa'). Dalam perjumpaan dengan DSP Musa, saya menanya DSP Musa apa yang berlaku selepas Kekecohan Kedua dan DSP Musa memberitahu saya bahawa AH tidak mengatakan apa-apa. Untuk beberapa hari selepas itu, saya terus menanya DSP Musa mengenai Si Mati, sama ada melalui telefon ataupun apabila saya bertembung dengan DSP Musa semasa kerja saya dengan MSRC, dan jawapan DSP Musa adalah sentiasa sama.

[141] Now, can these parts of the said affidavit be ignored or rejected? It is my finding that in the absence of any rebuttal evidence against them coupled with the fact that there is no legal onus that lies upon the third accused to rebut any statutory presumptions (such as in s 37(d) and 37(d)(a) DDA in the drugs cases), there is clearly to my mind, no reason for them to be ignored and rejected.

[142] I have perused through the whole contents of the said affidavit. Learned counsel for the third accused submitted that the all the exculpatory parts were corroborated in material particulars by P Balasubramaniam (SP1), Burmaa Oyuchimeg (SP6) Lans Corp Rohaniza (SP7) and Siti Aishah bt Mohd Azian (SP9), and the other surrounding circumstances have clearly negated and nullified the act of abetment as alleged against the third accused. I have no reason to disagree with him. The averrment about threat and blackmailing for example, is corroborated by the threatening letters sent by the deceased to the third accused ie P22A, P22C and P24. In P22A the deceased wrote as follows:

if you prefer money
Than life, it's ok
hope you'll prefer

A

more than money
your *Rowena* life
Better hurry
Razak;

B

and the deceased's message in P23A reads:

Razak
Don't play ok
I saw today morning
And yesterday too
I will stay at your
Office outside
Or you call me now
Or [illegible]
Or ill come to your home today —
'Amina'.

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[143] Learned counsel for the third accused again submitted that the notes ('exh P80A') written by the third accused that was found from the first accused's bag with the full address of his house in the name of his father Dato' Abdullah Malim Baginda, is wholly consistent with that of an innocent man asking the first accused in a bona fide manner for assistance ie for the police to patrol the vicinity of the third accused's house against the deceased's harassment and threats. ASP Zulkarnain (SP23), had admitted that the name of Dato' Abdullah Malim Baginda is the name of third accused's father whom he had met at the same address as written on the same notes. I cannot agree more with learned counsel.

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[144] Learned counsel also submitted the contents of the notes (exh P21A) written by the deceased had only undermined the deceased's credibility herself as her claim that her private investigator (PI), one Mr Hoh had informed her that … 'Indians could kill and put down from window' was not confirmed by Ang Chong Beng (SP5), her own PI. Learned counsel further submitted that the averment about blackmailing in the said affidavit was also confirmed by the admission of the deceased herself when she said in her notes, … 'Yes, maybe I did mistake to bother him to blackmail him'.

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[145] Having considered the evidence led by the prosecution in its totality to a maximum evaluation and guided by the advice set down by the Federal Court in the case *Public Prosecutor v Mohd Radzi bin Abu Bakar* [2005] 2 MLJ 301; [2006] 1 CLJ 457 and *Balachandran v Public Prosecutor* [2005] 1 CLJ 85, I have asked myself, am I prepared to send all the three accused persons to the gallows, if they elect to remain silent, when I now call upon them to make their defence on the evidence before me?. In the case of both the first and second accused, I am satisfied that the answer is a resounding 'Yes'. In the case of the

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third accused, there is only one answer starring at me, that is 'negative'. I am not prepared. In my view, once the essential elements of abetment ie by instigation, by conspiracy and by aiding, and in the context of this case, the death of Altantuya is not proven on the basis of a 'prima facie' evidence any other inferences and doubts that may have arisen must be resolved, as is trite, in favour of the accused person. It is not for the court to call for the defence merely to clear or clarify such doubts. Even if the third accused can be inferred as having had any 'motive' in the light of all the blackmailing letters of the deceased it cannot be made a basis for conviction of him without any direct or circumstantial eveidence of his participation in any manner in the commission of offence (see *Yogi Choudhary v State of Bihar* [2005] Cri LJ 2285; and *Varatharajalu v Public Prosecutor* [1960] MLJ 158).

[146] Consequently, I am satisfied that there is prima facie case for the first and second accused to answer as charged. I therefore call upon each of them to make their defence. In the case of the third accused, I am satisfied that there is no prima facie for him to answer his charge. I accordingly find the third accused not guilty and order him to be acquitted and discharged.

THE DEFENCE CASE

[147] The defence of the first accused by way of his sole evidence on oath has essentially been as follows — that he did not utter those statements relating to the scene which were admitted by this court as evidence of information leading to discovery of facts under s 27 of the Evidence Act 1950 — that he was not at the scene of crime at the relevant date and time and instead claimed that he was somewhere in Wangsa Maju as per his notice of alibi ('exh D430'). The first accused further claimed that he was not the last person to be with the deceased for he had handed over the deceased on the night question to the second accused for the second accused to send the deceased back to Hotel Malaya.

[148] The defence of the second accused by way of his unsworn written statement ('exh D441') are as follows:

> Pada 18.10.2006 saya bertugas di pejabat Unit Tindakan Khas (UTK, Bukit Aman, Kuala Lumpur. Saya telah menghadiri taklimat penugasan pada pagi tersebut dan telah diberi tugasan sebagai pemandu 'standby' pada waktu pejabat. Sekiranya ada pegawai atau anggota yang ingin ke mana atas urusan tugas, saya ditugaskan untuk memandu mereka. Pada sebelah pagi 18.10.2006, Azilah Hadri (OKT 1) ada menghubungi saya melalui telefon bimbit dan meminta saya berjuma dengannya. Azilah ada bertanya dengan saya tentang penugasan saya pada hari tersebut dan saya memaklumkan beliau mengenai penugasan waktu pejabat saya sebagai pemandu waktu 'standby'. Dalam perbualan telefon tersebut, saya bertanyakan Azilah lokasi beliau berada dan Azilah telah memberitahu saya bahawa beliau berada di Jalan Ampang, berhampiran Ampang Point menuju ke Central Market. Azilah mahu

A berjumpa dengan saya di Central Market. Di samping itu, Azilah juga bertanyakan saya samada saya tahu lokasi Hotel Malaya. Saya memberithau Azilah saya tidak tahu lokasi Hotel Malaya, malah saya tidak pernah mendengar nama Hotel tersebut walaupun saya telah tinggal di Kuala Lumpur hampir 10 tahun. Saya turut memberitahu Azilah bahawa saya sibuk pada ketika itu dan tidak dapat bertemu B dengannya. Walau bagaimanapun, saya menyatakan kesediaan saya untuk bertemu beliau setelah saya selesai bertugas. Pada masa tersebut, saya sedang memandu DSP Khairi ke kawasan Gombak atas urusan pembelian barang-barang pejabat UTK. Tidak lama selepas itu Azilah menelefon saya semula dan meminta saya bertemu dengannya juga setelah selesai urusan pembelian barangan UTK.

C Sekembali ke pejabat, setelah selesai memandu DSP Khairi, saya telah menelefon Azilah dan bertanyakan lokasi tepat bagi pertemuan kami. Azilah menetapkan tempat pertemuan kami di hentian bas/teksi bersebelahan Central Market. Setiba saya di hentian bas/teksi tersebut pada jam 2.00 petang 18/10/2006, Azilah memang sedia menunggu. Saya memperlahankan kenderaan di pinggir jalan raya D bersebelahan hentian itu dan Azilah terus naik kereta saya. Pada masa tersebut saya memandu kereta model Proton Satria. Kemudian Azilah mengarahkan saya memandu di sekeliling Kuala Lumpur untuk mencari lokasi Hotel Malaya tetapi setelah lama berlegar-legar kami gagal menjumpai hotel tersebut. Azilah kemudian mengarahkan saya untuk memandu keluar dari kawasan Kuala Lumpur menuju ke Damansara. Saya bertanya kepada Azilah apakah tujuan mencari Hotel Malaya dan E apakah tujuan untuk ke Damansara? Azilah memberitahu saya beliau ada kerja yang hendak dilaksanakan dan meminta saya mengikutinya sahaja. Dalam perjalanan ke Damansara, Azilah ada menceritakan kepada saya bahawa DSP Musa Bin Safri telah memberitahu beliau hal seorang kawan DSP Musa yang sedang menghadapi 'masalah perempuan'. Azilah mengarahkan saya untuk memandu ke rumah kawan F DSP Musa yang dimaksudkan di Bukit Damansara. Menurut Azilah kawan DSP Musa adalah seorang yang berjawatan tinggi, seorang ahli perniagaan dan seorang yang berada. Walau bagaimanapun, Azilah tidak mendedahkan kepada saya identiti kawan DSP musa itu. Sepanjang perjalanan tersebut Azilah juga menceritakan kepada saya bahawa seorang perempuan dan seorang lelaki yang dipercayai abang G kepada perempuan tersebut, kedua-duanya berbangsa Cina telah mengganggu dan membuat kecoh di hadapan rumah kawan DSP Musa. Menurut Azilah lagi, perempuan itu adalah kekasih lama kawan DSP Musa tersebut. Setiba di Bukit Damansara, Azilah telah mengarahkan saya untuk memasuki satu kawasan taman perumahan dan kami tiba di sebuah rumah banglo. Azilah meminta saya memperlahankan kenderaan dan sewaktu melalui di hadapan rumah banglo H tersebut, Azilah memberitahu saya bahawa itulah rumah kawan DSP Musa yang dimaksudkan. Setelah meninggalkan kawasan tersebut, Azilah meminta saya mengingati jalan ke banglo tersebut. Menurut Azilah, beliau telah berjanji kepada DSP Musa untuk membantu kawan DSP Musa untuk membuat rondaan di sekitar kawasan banglo tersebut dari masa ke semasa di luar waktu berugas untuk I mengelakkan perempuan dan lelaki Cina tersebut membuat kecoh di hadapan rumah kawannya. Pada tahap ini, Azilah telah memohon bantuan saya dan bertanya sekiranya beliau mempunyai tugasan rasmi di luar Kuala Lumpur adakah saya sanggup menolong beliau membuat rondaan di sektitar kawasan berkenaan dari masa ke semasa sekiranya saya tidak mempunyai sebarang tugas rasmi. Saya bersetuju berbuat demikian kerana saya mengenali DSP Musa dan saya melihat

tugasan ini sebagai bantuan yang dipinta oleh DSP Musa, seorang pegawai atasan saya. Saya beranggapan bahawa persetujuan saya untuk membantu Azilah adalah sebenarnya persetujuan saya untuk berkhidmat kepada pegawai atasan saya.

Daripada Bukit Damansara Azilah mengarahkan saya untuk memandu semula ke Central Market kerana kereta beliau masih berada di tempat letak kereta di Central Market. Ketika dalam perjalanan, Azilah memberitahu saya bahawa perempuan dan lelaki Cina tersebut tinggal di Hotel Malaya. Pada ketika itu, barulah saya menyedari bahawa tujuan Azilah mencari lokasi Hotel Malaya adalah untuk mengenal pasti tempat tinggal perempuan dan lelaki Cina itu. Sepanjang saya bersama Azilah dalam perjalanan tersebut, beliau tidak pernah menunjukkan apa-apa dokumen, kertas ataupun nota yang mengandungi sebarang maklumat tentang identiti kawan DSP Musa, alamat tempat tinggal, alamat hotel, nombortelefon, mahupun identiti perempuan serta lelaki Cina tersebut. Sewaktu kami hampir tiba di Central Market, Azilah mengarahkan saya untuk memberhentikan kenderaan saya di luar Central Market kerana beliau ingin berjumpa rakannya, yang merupakan seorang pelukis di central market untuk bertanyakan lokasi Hotel Malaya. Saya memasuki kawasan letak kereta Central Market dan menunggu di dalam kereta selama sepulu minit sementara Azilah masuk ke dalam Central Market. Tidak lama kemudian, Azilah mengetuk cermin kereta saya dan memberitahu saya bahawa Hotel Malaya hanya terletak di kawasan sekitar Petaling Street, tidak jauh daripada Central Market. Azilah menyuruh saya mematikan enjin kereta dan mengikutinya ke Hotel Malaya secara berjalan kaki.

Setibanya di Hotel Malaya, kami masuk ke ruang lobi. Azilah menyuruh saya mengambil risalah, katalog dan sebaran yang terdapat di sudut maklumat di lobi Hotel tersebut. Kemudian Azilah berjalan ke ruang lif dan mengajak saya memasuki lif untuk ke tingkat atas. Azilah menekan butang didalam lif tersebut tetapi saya tidak tahu ke tingkat berapa. Apabila lif berhenti dan pintunya terbuka, Azilah mengajak saya keluar dari lif tersebut. Saya tidak tahu di tingkat berapa saya berada pada masa tersebut tetapi jika tidak silap saya, lif tersebut berhenti di tingkat tujuh. Saya mengikut Azilah dari belakang dan tiba-tiba Azilah berhenti di hadapan sebuah bilik yang pintunya tertutup. Saya tidak mengingati berapakah nombor bilik tersebut. Pada masa itu, Azilah tidak berkata apa-apa kepada saya. Saya bertanya Azilah apa yang ingin beliau lakukan? Azilah berkata beliau berhasrat untuk berjumpa perempuan dan lelaki Cina itu untuk menasihati mereka agar tidak menganggu atau membuat kecoh di hadapan rumah kawasn DSP Musa lagi. Kemudian Azilah memberitahu saya bahawa beliau tidak begitu pasti samada bilik berkenaan adalah bilik yang sebenarnya dihuni oleh perempuan dan lelaki Cina itu. Selepas itu Azilah mengajak saya beredar dari situ. Kami menaiki lif dan turun semula ke lobi Hotel Malaya. Kami kemudiannya keluar dari pintu utama meninggalkan Hotel Malaya dan berjalan kaki semula ke tempat letak kereta Central Market. Di tempat letak kereta berkenaan, Azilah menyuruh saya pulang ke pejabat sahaja dan sekiranya bantuan saya diperlukan beliau akan menelefon saya. Saya memandu pulang ke pejabat UTK.

Pada 19.10.2006, lebih kurang jam 8.45 malam, saya berada di rumah saya di Kota Damansara dan sedang menonton televisyen. Tiba-tiba saya menerima satu panggilan telefon daripada Azilah yang meminta saya datang ke rumah kawan DSP Musa yang kami kunjungi siang tadi di Bukit Damansara. Menurut Azilah beliau menerima maklumat bahawa perempuan dan lelaki Cina tersebut berada di

A hadapan rumah kawan DSP Musa dan Azilah memerlukan bantuan sokongan daripada saya jika sekiranya lelaki Cina tersebut bertindak ganas. Saya memberitahu Azilah saya akan segera siap dan pergi ke sana. Lebih kurang lima minit kemudian, saya keluar meninggalkan rumah saya dengan menaiki kenderaan jeep saya dan memasuki tol Kota Damansara di lebuh raya NKVE untuk ke bukit Damansara. B Dalam perjalanan ke rumah kawan DSP Musa di sekitar kawasan Bukit Damansara, saya terlupa lokasi tepat rumah tersebut dan terpaksa menelefon Azilah untuk mendapatkan panduan arah. Tidak lama selepas itu, Azilah menghubungi saya semula untuk bertanyakan samada panduan arah yang beliau berikan telah membolehkan saya menemui lokasi rumah tersebut. Saya memberitahu Azilah saya C sudah hampir tiba. Setiba di kawasan berhampiran rumah kawan DSP Musa, saya telah memberhentikan kenderaan di tepi sebuah simpang tiga dan berjalan kaki menuju ke rumah tersebut. Semasa menghampiri rumah tersebut, saya nampak Azilah sedang bercakap-cakap dengan seorang perempuan Cina dan seorang lelaki India bertubuh gempal. Apabila Azilah nampak saya menghampiri rumah tersebut beliau telah membuat isyarat tangan kepada saya yang kelihatan seolah-olah D menyuruh saya masuk ke dalam kereta Wira Aeroback berwarna merah yang ada berhampiran rumah banglo itu, Saya menurut arahan Azilah dan memasuki kereta tersebut. Saya duduk di kerusi sebelah pemandu dan saya dapati ada seorang perempuan Melayu sedang duduk di kerusi pemandu. Tidak lama selepas itu, saya nampak perempuan Cina tersebut berjalan menuju ke kereta Wira Aeroback merah E berkenaan sambil didikuti oleh Azilah, meninggalkan lelaki India bertubuh gempal tersebut. Perempuan Cina tersebut terus membuka pintu penumpang belakang kereta tersebut dan memasukinya. Perempuan Melayu yang pada mulanya duduk di tempat pemandu itu membuka pintu kenderaan dan keluar daripadanya dan kemudian memasuki semula ke tempat duduk belakang. Azilah memasuki kenderaan dan duduk di tempat pemandu. Sewaktu Azilah hendak memulakan F pemanduan, seorang lelaki Cina datang menjenguk tingkapnya. Lelaki Cina itu menuntut tambang teksi yang belum dijelaskan oleh perempuan Cina tersebut. Azilah telah menghulurkan sekeping wang RM50.00 tetapi pemandu teksi itu berkata tidak cukup kerana tambang yang sepatut diterimanya adalah RM150.00. Azilah menghulurkan dua keping lagi wang RM50.00 kepada pemandu teksi itu. G Kemudian kami beredar meninggalkan kawasan rumah banglo tersebut. Setiba di simpang tiga tidak jauh dari situ, saya meminta Azilah menurunkan saya di situ untuk saya kembali ke kenderaan saya.

Kemudian saya memandu kenderaan saya untuk keluar dari kawasan tersebut. Saya dapat melihat bahawa kereta Azilah mengekori saya dari belakang. Apabila kami H keluar semula ke jalan utama iaitu Jalan Damansara menuju ke Jalan Duta, Azilah telah menghubungi saya melalui telefon dan meminta saya memberhentikan kenderaan di tepi jalan raya. Sewaktu itu, saya sedang memandu di sekitar kawasan di mana terletaknya Bangunan Amanah Raya yang lama. Saya memberhentikan kenderaan di tepi sebuah perhentian bas dan saya lihat Azilah turut I memberhentikan kenderaan di tepi sebuah perhentian bas dan saya lihat Azilah turut memberhentikan kenderaan di belakang saya. Kemudian Azilah turun dari keretanya dan menghampiri kenderaan saya. Saya menurunkan cermin dan Azilah berkata beliau sedang menasihati perempuan Cina tersebut dan berdasarkan perilaku dan respon perempuan Cina tersebut, Azilah mengatakan beliau mempercayai perempuan Cina itu kelihatan seolah-olah menerima nasihat yang

telah beliau berikan. Kemudian Azilah bertanya pada saya ke mana saya ingin pergi. Saya memberitahu Azilah bahawa memandangkan keadaan adalah terkawal dan saya tidak mempunyai apa-apa peranan lagi saya ingin pulang ke rumah. Azilah kata 'Ok'. Selepas itu, saya meneruskan pemanduan dari Jalan Damansara membelok sebelah kiri ke Jalan Duta yang menghala ke arah lebuhraya NKVE dan Kompleks Kerajaan Jalan Duta. Sebelum membuat belokan yang menghala ke NKVE, saya telah menghubungi Azilah melalui telefon untuk bertanyakan samada saya perlu membuat rondaan di kawasan rumah kawan DSP Musa pada hari keesokannya memandangkan Azilah akan bertugas di Putrajaya. Azilah memberitahu saya beliau sedang bercakap dengan perempuan Cina tersebut dan meminta saya menghubungi beliau semula dalam tempoh 5 minit. Setelah membuat belokan ke arah NKVE, dan membuat belokan kiri sekali lagi menghala ke Penchala Link, dan sewaktu saya berada di kawasan komersial Sri Hartamas, saya telah menghubungi semula Azilah untuk bertanyakan soalan yang sama. Menurut Azilah, belaiu telahpun menasihati perempuan Cina tersebut dan perempuan itu bersetuju untuk tidak mengganggu atau membuat kecoh di hadapan rumah kawan DSP Musa lagi, Azilah memberitahu saya bahawa saya tidak perlu membuat rondaan pada keesokan hari, sebaliknya, sekiranya dapat laporan gangguan atau kekecohan daripada kawan DSP Musa, barulah Azilah akan menghubungi saya. Selepas perbualan tersebut, saya telah memberhentikan kenderaan di tempat letak kereta di kawasan komersial Sri Hartamas dan pergi ke Restoran Devi's Corner untuk minum teh, makan tosai sambil mengimbas majalah 'Motor Trader'. Lebih kurang 20 minit kemudian, saya memandu semula kenderaan keluar dari kawasan komerisl Sri Hartamas menuju ke lebuhraya NKVE. Saya telah memasuki plaza tol Jalan Duta dan keluar di plaza tol Kota Damansara. Daripada plaza tol Kota Damansara, saya memandu selama lebih kurang 5 minit untuk kembali ke rumah saya. Saya tiba di rumah saya lebih kurang jam 10.00 malam. Kemudian pada sekitar jam 12.00 tengah malam, saya sekali lagi memandu kenderaan saya keluar daripada rumah menghala ke plaza tol Kota Damansara menuju ke plaza tol Jalan Duta dan seterusnya ke Kampung Baru Kuala Lumpur untuk bersahur.

Sebelum 31.10.2006, saya telah menerima arahan daripada ACP Mastor untuk menjalankan tugas litupan keselamatan ke atas YAB Perdana Menteri di Islamabad, Pakistan selama 10 hari bermula daripada 31.10.2006 sehingga 9.11.2006. Sebelum berlepas ke Paskitan, saya telah meninggalkan kenderaan jeep saya di tempat letak kereta di perkarangan Bukit Aman dan meninggalkan kunci kepada kenderaan tersebut dalam tray kunci di Pejabat saya. Saya telah berpesan kepada Sarjan Rosli untuk mengambil kunci daripada tray sekali-sekala dan menghidupkan enjin kenderaan saya. Sebelum berlepas ke Pakistan, saya telah mengemas kenderaan saya dan menyusun rapi barangan-barangan dalamnya. Di antara barangan di dalam kenderaan saya pada masa tersebut adalah sepasang selipar berwarna merah yang saya sisipkan dengan rapi di tepi kotak plastik yang besar di bahagian belakang ('boot') kenderaan saya. Semasa perbicaraan ini, saya telah berkesempatan melihat gambar bernombor 12 di dalam P25 di mana selipar berwarna merah ini boleh kelihatan tersisip rapi di bahagian paling kanan. Selipar ini bersaiz 8, menurut saiz kaki saya. Semasa perbicaraan saya juga berkesempatan melihat gambar-gambar bernombor 35 sehingga 41 dalam P25 yang menunjukkan sepasang selipar berwarna putih bertulis 'BNA' di atas pelapiknya dan bertulis 'HEAT ADSAWD' di atas galangnya. Saya tidak pernah melihat ataupun memiliki

A mahupun memakai selipar ini. Bahkan semasa saya meninggalkan kenderaan saya di tempat letak kereta Bukit Aman pada 31.10.2006, selipar ini tidak berada di dalam kenderaan saya. Selipar ini juga tidak sesuai dengan saiz saya.

Pada waktu pagi 5.11.2006, saya bertugas sebagai pengawal peribadi kepada Perdana Menteri di mana ketika itu Perdana Menteri berada di dalam bilik B persidangan sebuah hotel di Islamabad. Tiba-tiba, datang DSP Fisal meminta saya naik ke atas untuk menyediakan makanan kepada seorang bergelar Dato'. DSP Fisal mengarahkan saya untuk menyerahkan tugas. Saya telah naik ke bilik dan mendapati rakan sekerja saya telah bersedia untuk membuat pertukaran tugas. Saya telah serahkan pistol kepada rakan saya dan saya berehat di dalam bilik beliau C sementara menantikan arahan selanjutnya untuk penyediaan makanan. Tidak lama selepas itu, pintu bilik diketuk dan saya membukanya, dan mendapati ACP Mastor terpacul di muka pintu semasa Sarjan Jelima serta Korporal Zamri dari UTK. ACP Mastor mnegarahkan saya untuk pulang ke Malaysia di atas alasan bahawa bekas isteri saya telah membuat laporan polis terhadap saya dan saya perlu pulang untuk D menyelesaikan masalah berkenaan. Saya, ACP Mastor, Sarjan Jelima dan Korporal Zamri berlepas dari Islamabad ke Malaysia menaiki kapal terbang. Setiba di KLIA pada 6.11.2006, terdapat pegawai dan anggota UTK telah bersedia menanti kami di aero bridge. Saya dibawa ke dalam kenderaan pasukan dan dipandu ke IPK Kuala Lumpur ('IPK KL'). Tiba di IPK KL, saya diserahkan oleh ACP Mastor kepada DSP Gan di pejabat D9 IPK KL. Di Pejabat D9, saya telah disoalsiasat selama lebih E kurang setengah jam. Tidak lama selepas itu, datang seorang anggota yang saya kenali sebagai Sarjan Amran yang telah mengenakan sebelah gari ke tangan saya dan sebelah lagl gari ke tangannya. Kemudian muncul ASP Tony yang mengarahkan saya dibawa ke Pajero Pasukan. Saya dibawa turun melalui lif bersama ASP Tony, Janagaren, ASP Zulkarnain dan beberapa anggota D9 yang lain termasuk seorang F jurugambar yang menggalas kamera video yang besar di bahunya. Tiba di bawah saya diarahkan menaiki sebuah Pajero. Kedudukan saya dalam Pajero adalah di bahagian tengah tempat duduk belakang, di kanan saya Sarjan Amran dan di sebelah kiri saya ASP Zulkarnain. Pemandu ketika itu ialah Korporal Khairuddin manakala ASP Tony duduk di sebelah pemandu. Di belakang barisan tempat duduk G saya, adalah Janagaren dan jurugambar yang membawa kamera video tersebut. Kenderaan Pajero kami bergerak secara konvoi mengikuti kenderaan Pajero serta kenderaan-kenderaan pasukan yang lain menuju ke Jalan Hang Tuah, Jalan Lapangan Terbang Lama melintasi bangunana Dewan Bahasa Dan Pustaka, Jalan Istana melintasi Istana Negara, Muzium negara, Jalan Duta dan masuk ke susur lebuhraya NKVE di plaza tol Jalan Duta dan keluar di plaza tol Kota Damansara. H Selepas keluar dari plaza tol tersebut, kami mengekori kenderaan-kenderaan pasukan yang lain dan berhenti di luar kampus UiTM Puncak Alam. Sepanjang perjalanan kami, saya tidak perasan jika ada sesiapa di dalam kenderaan kami yang memandu arah perjalanan. Saya tidak berbuat demikian dan saya tidak diminta berbuat demikian. Kemudian konvoi kami bergerak semula daripada kampus I UiTM Puncak Alam menuju ke Klang. Tiba di satu simpang empat, konvoi bergerak secara perlahan dan kenderaan Pajero yang saya naiki terus melepasi simpang empat dan membelok ke sebelah kanan memasuki satu lorong hutan. Di kawasan semak tersbeut, ASP Tony mengarahkan saya turun dari kenderaan. Kami berlegar-legar selama lebih kurang 20 minit sebelum ASP Tony mengarahkan saya naik semula ke kenderaan Pajero. Kenderaan kami keluar semula dari kawasan

tersebut. Tiba-tiba telefon bimbit ASP Tony berdering, dan saya melihat ASP Tony menjawab panggilan tersebut. Sejurus selepas panggilan tersebut, ASP Tony menyatakan kepada ASP Zulkarnain dan pemandu bahawa 'Ini jalan silap'. ASP Tony mengarahkan pemandu menuju ke simpang empat semula. Di simpang empat, pemandu kenderaan kami membelok ke sebelah kiri jalan dan kami berhenti. Selepas itu, ASP Tony sekali lagi menjawab telefon beliau yang berdering. Selepas itu, ASP Tony mengarahkan pemandu untuk membelok ke sebelah kiri sekali lagi ke dalam kawasan hutan. Kenderaan kami mendaki bukit sehinggalah sampai ke satu kawasan lapang. Di sana, saya dapat melihat sebuah Pajero pasukan berwarna biru telahpun berada di kawasan lapang tersebut. Sebelum turun dari kenderaan, saya dapat melihat Azilah, Chief Inspector ('C/I') Koh Fei Chow, DSP Zainuddin serta beberapa orang lelaki berpakaian preman telahpun berlegar-legar di kawasan lapang itu. Saya hanya diarahkan oleh ASP Tony untuk turunkan dari Pajero dan berdiri bersebelahan Pajero sahaja. Sewaktu hari hampir senja, saya diminta naik semula ke dalam Pajero dan kenderaan kami bertolak pulang ke IPK KL.

Pada 7.11.2006, saya dibawa kelaur dari lokap lebih kurang jam 11.00 pagi untuk dibawa ke Mahkamah Majistret Kuala Lumpur bagi tujuan reman. Setelah selesai urusan reman, saya dibawa ke pejabat ASP Zulkarnain yang terletak di pejabat D9 IPK KL. Saya sampai di pejabatnya dalam keadaan bergari dan melihat ASP Zulkarnain telah berada di dalam biliknya bersama C/I Koh Fei Chow. Terdapat dua kerusi sahaja di dalam biliknya yang agak sempit. ASP Zulkarnain duduk di kerusi di hadapan mejanya dan saya diarahkan duduk menghadapnya sementara C/I Koh Fei Chow berdiri di sebelah ASP Zulkarnain pada ketika itu. Ada ketikanya C/I Koh Fei Chow keluar dan masuk ke dalam bilik itu. ASP Zulkarnain sentiasa berada bersama saya sejak awal sehingga akhir perjumpaan. Seingatan saya, C/I Koh Fei Chow banyak kali keluar dan masuk bilik tersebut dan setiap kali beliau keluar, beliau berada di luar bilik di antara 4 ke 5 minit. Di dalam bilik itu, ASP Zulkarnain ada bertanyakan soalan-soalan kepada saya, saya menjawab mana yang saya tahu dan menyatakan tidak tahu kepada soalan-soalan yang mana jawaban terhadapnya saya tidak tahu. Dalam tempoh pertemuan saya dengannya, saya tidak pernah menyatakan kepada ASP Zulkarnain bahawa saya ingin membuat sebarang pendedahan. Saya juga sama sekali tidak pernah menyatakan kepadanya yang saya ingin memberi sebarang maklumat. Saya tahu apa itu 'Amaran' (Caution). Di dalam pertemuan saya dengan ASP Zulkarnain, beliau langsung tidak membaca kepada saya 'Amaran' tersebut. Setiap kali saya menjawab tidak tahu kepada soalan-soalan beliau, ASP Zulkarnain meninggikan suara dan pada satu ketika dalam nada suara yang tinggi, beliau berkata 'Kamu bercakaplah yang benar, apa yang kamu tahu beritahulah saya, kamu adalah seorang anggota, kami akan menolong kamu, hal ini tak akan dibawa ke Mahkamah'. Saya hanya mendiamkan diri. Pada satu ketika yang lain, ASP Zulkarnain ada meninggikan suara dan berkata denagn nada yang tegas dan marah kepada saya 'Engkau jangan buat aku layan engkau macam OKT lain'. Masa itu mukanya merah, beliau berdiri dan kemudian duduk semula. Saya takut beliau pukul saya macam OKT lain. Saya terfikir kalau saya bukan anggota, sudah tentu ASP Zulkarnain akan pukul saya. ASP Zulkarnain terus mengajukan soalan-soalan kepada saya yang mana jawapannya saya tidak tahu. Apabila saya terus-menerus menjawab tidak tahu, ASP Zulkarnain bangun dan menghentak meja dan berkata 'Macam nilah Sirul, kalau kau setuju, engkau ikut aku, kau

A camkan barang-barang tu, kau pegang dan tunjuk ke arah barang itu sambil camera man ambil gambar, aku boleh tolong engkau dan hal ini kita tidak akan bawa ke Mahkamah'. Semasa beliau berkata begittu, C/I Koh Fei Chow tiada di dalam bilik. Semasa itu suara ASP Zulkarnain perlahan dan saya percaya beliau akan menolong saya. Saya diamkan diri dan tidak bertanya apa-apa tentang ke mana saya akan B dibawa pergi dan apa maksud ASP Zulkarnain tentang barang-barang yang beliau ingin saya tunjukkan nanti.

Semasa di dalam bilik ASP Zulkarnain, saya tidak nampak sesiapa menaip kecuali di akhir pertemuan bila mana ASP Zulkarnain membuka laptop beliau dan menaip sesuatu. Ini berlaku selepas ASP Zulkarnain bercakap dengan nada perlahan dan C meminta saya mengikut beliau mengecam barang-barang. Semasa itu saya tidak melihat C/I Koh Fei Chow apa-apa langsung, cuma beliau ada membawa masuk sehelai A4 di atas arahan ASP Zulkarnain. 5 minit selepas ASP Zulkarnain selesai menaip saya dibawa keluar oleh C/I Koh Fei Chow ke bilik mesyuarat D9 dan ditinggalkan disitu selama lebih kurang 20 minit. Selepas itu saya dibawa turun oleh D Korporal Chiam, ASP Zulkarnain, C/I Koh Fei Chow dan C/I Shawal menaiki lif ke sebuah kenderaan Pajero. Saya mengikuti mereka tanpa bertanya apa-apa. Setelah menaiki Pajero tersebut, pemandu iaitu Korporal Khairuddin telah memandu menuju ke Jalan Duta kemudian ke susur masuk lebuhraya NKVE, ke plaza tol Jalan Duta dan keluar melalui plaza tol Kota Damansara. Semasa itu, saya merasakan mereka hendak menuju ke kediaman saya. Terdapat sebuah kenderaan E Volvo berwarna putih berlambang PDRM mengekori Pajero kami. Apabila diarahkan oleh ASP Zulkarnain, Pajero kami bergerak terus ke kawasan flat tempat saya tinggal dan berhenti di bawah flat. Semasa dalam perjalanan, tiada sesiapa bertanyakan saya lokasi kediaman saya. Saya dan anggota di dalam Pajero hanya berbual mengenai tugas-tugas UTK dan tugas-tugas di luar Negara. Saya sendiri F juga tidak ada memberitahu pegawai dan anggota mengenai alamat rumah saya. Saya juga tidak diminta untuk memandu arah ke kediaman saya di sepanjang perjalanan tersebut. Saya nampak Unit Pemusnah Bom (UPB) bersama kereta Volvonya turut berhenti di perkarangan flat kediaman saya. Selepas itu, ASP Zulkarnain, C/I Koh Fei Chow dan saya bersama anggota lain keluar dari Pajero. G Sepanjang perjalanan sehinggalah tiba di flat kediaman saya, tanagn saya sentisa bergari ke tangan Korporal Chiam. Di bawah flat, saya nampak pegawai dari UTK iaitu DSP Yusri, Sarjan Rosli dan Sarjan Zafri turut berada di situ. Saya nampak Sarjan Rosli mengeluarkan segenggam anak kunci yang banyak dan menyerahkan kepada C/I Koh Fei Chow. Anak-anak kunci tersebut adalah di dalam satu rangkaian yang berankum bersekali. Kunci untuk rumah saya ada banyak dan H bukannya serangkai tiga batang anak kunci seperti yang ditunjukkan di dalam mahkamah. Saya melihat Sarjan Rosli menyerahkan serangkai kunci tersebut kepada C/I Koh Fei Chow dan saya tahu ianya adalah kunci rumah saya kerana kunci rumah saya telah lusuh warnanya dan bukannya berkilat seperti yang ditunjukkan kepada saya di dalam Mahkamah. Kunci rumah saya ini telah saya serahkan kepada ACP Mastor semasa saya dalam penerbangan dari Islamabad ke I KLIA. Selepas Sarjan Rosli menyerahkan kunci, saya melihat C/I Koh Fei Chow telah serahkan pula kunci tersebut kepada ASP Zulkarnain. Selepas itu, ASP Zulkarnainmembawa saya naik ke atas diekori oleh C/I Koh Fei Chow, DSP Yusri, Sarjan Rosli dan Sarjan Zafri. Saya mengekori mereka dari belakang dengan tangan bergari ke tangan Korporal Chiam. Semasa naik ke atas pun, ASP Zulkarnain tidak

meminta dariapda saya alamat tepat rumah saya. Semasa itu, jurugambar Kamarulzaman, Khairuddin dan UPB belum naik lagi. C/I Shawal naik bersama mengekori saya dari belakang. Kemudian saya dibawa ke tingkat 3, sampai dihadapan di rumah saya bernombor 5-3-7. Pintu rumah saya dibuka oleh ASP Zulkarnain dan kesemua yang naik tadi masuk ke dalam rumah. ASP Zulkarnain masuk dahulu dan kemudian mengarahkan saya dan Korporal Chiam duduk di kerusi meja makan di ruang tamu. Semasa itu, jurugambar Kamarulzaman belum naik lagi. Semasa saya duduk di meja makan, ASP Zulkarnain masuk ke dalam bilik tidur utama rumah saya diikuti oleh C/I Koh Fei Chow, C/I Shawal, DSP Yusri. Sarjan Rosli dan Sarjan Zafri. Kemudian pintu bilik tidur utama ditutup. Kesemua mereka berada di dalam bilik tersebut dalam keadaan pintu bilik tertutup selama hampir sepuluh minit sementara saya dan Korporal Chiam masih duduk di ruang meja makan. Semasa pintu bilik masih tertutup, jurugambar Kamarulzaman naik ke rumah saya dan masuk ke ruang tamu. UPB juga naik ke atas tetapi tidak masuk ke dalam rumah. Lebih kurang sepuluh minit kemudian, pintu bilik tidur utama dibuka dan saya nampak DSP Yusri, Sarjan Rosli dan Sarjan Zafri kelaur dari bilik tersebut membawa satu beg besar dan dua beg yang lain keluar dari rumah saya. Pintu bilik tidur utama ditutp semula. Lebih kurang 3 minit kemudian, ASP Zulkarnain membuka pintu bilik utama dan memanggil saya masuk. Saya dan Korporal Chiam masuk ke dalam bilik itu dan saya telah diarahkan untuk berdiri di sebelah almari pakaian saya. ASP Zulkarnain kemudiannya memanggil masuk jurugambar Kamarulzaman yang berada di luar bilik. Di dalam bilik itu, ASP Zulkarnaian berkata, 'Ini jaket kamu, kamu pegang'. Semasa itu, jurugambar dipanggil dan aksi-aksi yang diarahkan oleh ASP Zulkarnain untuk saya lakukan telah dirakam oleh jurugambar.

Semasa saya mula masuk, saya nampak keadaan cadar katil saya berselerak, pintu almari sedia terbuka dan kipas di ceiling sedia berpusing. Apabila ASP Zulkarnaian minta saya pegang jaket, saya pun pegang dan ASP Zulkarnain dalam masa yang sama panggil masuk jurugambar Kamarulzaman. Sementara Kamrulzaman sedang masuk, saya lepaskan memegang jaket tersebut. Setelah Kamarulzaman masuk, saya pegang semula jaket tersebut dan gambar saya memegang jaket tersebut diambil oleh Kamarulzaman. Sambil memegang jaket tersebut, saya tidak berkata apa-apa.

Setelah itu, saya diarahkan berdiri di sisi katil. Saya lihat ASP Zulkarnaian keluarkan jaket yang saya pegang tadi dari dalam almari dan mengambil sesuatu keluar dari dalam jaket. Jaket itu dibentangkan di aats katil dan ASP Zulkarnaian meletakkan barang-barang di atas jaket tersebut. ASP Zulkarnain mengarahkan saya menunjukkan ke arah barang-barang tersebut, ASP Zulkarnain berkata, 'kamu tunjukkan barang-barang itu'. Saya kata 'apa ni Tuan'. Saya tidak mahu tunjukkan, ASP Zulkarnain minta saya tunjukkan juga sambil berkata 'kamu tunjuk sajalah Sirul'. Barulah ketika itu saya tunjukkan sambil gambar saya itu diambil. Sambil menunjukkan jari tangan saya ke arah barang-barang tersebut, saya tidak berkata apa-apa. Selepas itu, saya diarahkan keluar duduk di meja makan. Semasa saya di dalam bilik tersebut sehinggalah saya dibawa keluar, mana-mana pegawai tidak ada membacakan saya apa-apa 'Amaran'. Selepas itu, dari rumah saya, saya terus dibawa balik ke Bukit Aman.

Sebelum saya mengakhiri kenyataan ini, saya ingin menyatakan bahawa saya tidak pernah mengenali mangsa di dalam kes ini dan tidak pernah mempunyai sebarang urusan peribadi mahupun sebaliknya dengan beliau. Saya juga tidak mengenali

A

Abdul Razak Bin Abdullah dan tidak pernah mempunyai sebarang urusan dengan beliau sebelum kes ini. Saya merayu kepada Mahkamah ini untuk mengambil kira bahawa sepanjang perbicaraan ini, saya telah mengikuti presiding ini dan menyaksikan bagaimana beberapa saksi penting pendakwaah terutamanya saksi-saksi dari D9 IPK yang mereka-reka cerita, tidak bercakap benar dan sentiasa merubah-ubah cerita mereka bila disoal balas. Saya melihat keadaan ini dengan keprihatinan kerana bagi saya tindakan mereka ini semata-mata bertujuan untuk mendapatkan sabitan terhadap saya sebagai 'kambing hitam' yang harus dikorbankan untuk melindungi rancangan dan niat jahat mereka yang tidak berada di dalam Mahkamah ini untuk menghadapi natijah daripada perlakuan dan perancangan mereka. Saya tidak mempunyai sebarang sebab untuk mencederakan apatah lagi mengambil nyawa mangsa dengan begitu kejam. Saya merayu kepada Mahkamah ini yang kini berada di dalam kedudukan dan mempunyai kuasa untuk menentukan hidup dan mati saya, agar tidak menghukum saya sekaligus menyempurnakan perencanaan mereka terhadap saya.

B

C

Kenyataan dari Kandang Tertuduh,

D

tt.

SIRUL AZHAR BIN HAJI UMAR.

E

[149] Essentially, the second accused is saying that he was made the 'scapegoat' — that he did not utter all the statements relating to those personal belongings of the deceased which were admitted by this court as evidence of information leading to the discovery of facts under s 27 of the Evidence Act 1950. The second accused further claimed that he was not at the scene of crime on the said date and time but was instead having tea at Devi's Corner in Sri Hartamas and having 'sahur' at Kampung Baru, Kuala Lumpur. He finally stressed as not true that the first accused had handed over to him the deceased for her to be sent back to Hotel Malaya.

F

G

FINDINGS OF THE COURT

[150] Having heard the defence of the first and the second accused, what is required of the court to decide at this stage, is whether the prosecution in the light of the defence's case, has proved its case beyond reasonable doubt for the accused to be found guilty and convicted as charged or whether the defence have cast reasonable doubt which warrant their acquittal.

H

[151] The first accused did not call any of his witness to support his defence and his alibi. The station dairy (D428) was likewise not formally proven. The law relating to the non calling of a witness by the defence is well settled ie, notwithstanding that, it should not be made subject of adverse comment by the court and that s 114(g) of the Evidence Act 1950 should not be invoked against the accused person. The court must still consider whether he has nevertheless succeeded in casting a reasonable doubt on the prosecution's case.

I

[152] The law relating to the weight to be attached to the unsworn statement from the dock which is not subjected to cross-examination by the prosecution, is likewise settled ie notwithstanding that the weight to be attached to this category of defence may not be the same as one attached to the defence upon evidence on oath, but the court must no reject it ipso facto, instead must consider it for whatever it worth having regard to the other evidence available and to see whether the defence has succeeded in casting a reasonable doubt on the prosecution's case.

[153] I have kept at the forefront of my mind of the two aforesaid principles in considering the respective defence of these two accused persons.

CONCLUSION

[154] Having heard the submission of both the defence and the prosecution and having considered and tested the defence put up by both the first and second accused person, individually and jointly against the totality of the evidence for the prosecution, I find that the defence of each of the accused have essentially been one of denial, of blaming one another, irreconcilable and ambivalent. Consequently they have failed to raise any reasonable doubt on the prosecution's case. To respectfully paraphrase the famous words of Thomson CJ in *Chan Chwen Kong v Public Prosecutor* [1962] MLJ 307 ie the several strands of physical and circumstantial evidence of the prosecution have remained unrebutted, unexplained and unanswered by both accused persons. The combined strength of those strands of evidence when twisted together has formed two ropes, strong enough to hang each accused person.

[155] I am satisfied therefore that the prosecution has proved the case against both the first and the second accused beyond reasonable doubt. Accordingly, I find both them guilty and convicted as charged. I thereby sentenced both the first and second accused to death and order both of them to be kept in the lawful custody until they are brought to a lawful place where they will be hung by their neck until they are dead.

First and second accused convicted of murder and sentenced to death; third accused acquitted and discharged.

Reported by Kohila Nesan